

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

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* 14-cr-93-01-LM
* August 25, 2015
* 9:10 a.m.

ALKTS NAKOS

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Day No. 6
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE LANDYA B. MCCAFFERTY
and a jury

Appearances:

For the Government: Terry L. Ollila, AUSA
U.S. Attorney's Office
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Concord, NH 03301

For the Defendant: Robert L. Sheketoff, Esq.
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I N D E X

4 Closing by Ms. Ollila, page 6

5 | Closing by Mr. Sheketoff, page 42

6 | Judge's charge, page 66

10 | EXHIBITS: ID. Evid.

Defendant's Exhibit 2 4

1 BEFORE THE COURT

2 THE COURT: The government has rested.
3 Defense has technically not rested yet, haven't rested
4 its case. So I just want to make sure Mr. Nakos
5 understands his right to testify if he desires and
6 understands his absolute right not to testify if you
7 desire. I want to make sure that you understand that
8 that's your decision and yours alone, sir. Do you
9 understand that?

10 MR. NAKOS: Yes, I do, your Honor.

11 THE COURT: All right. Thank you. Let's
12 bring the jury in, and before the defendant rests its
13 case formally, I'm going to instruct the jury on two
14 issues.

15 BEFORE THE JURY

16 THE CLERK: The Court has before it for
17 consideration today jury trial day six in Criminal Case
18 14-cr-93-01-LM, United States of America versus Alkis
19 Nakos.

20 THE COURT: Good morning, members of the jury.
21 The government has rested its case. I have an
22 instruction for you with respect to the government's
23 case.

24 I have disallowed two pieces of evidence.
25 First, you heard testimony about statements made by an

1 individual identified as Kaylee Couture. I have
2 disallowed that evidence. In other words, I have
3 removed it from the case.

4 Second, you heard testimony that an individual
5 identified as Andre Watson committed a crime. I have
6 also removed that from evidence.

7 This evidence is stricken from the case. You
8 may not consider this evidence. You must treat it as
9 though you never heard it. To discuss the evidence or
10 consider it in any way during deliberations would be a
11 violation of my instructions and a violation of your
12 sworn duty as jurors. Attorney Sheketoff.

13 MR. SHEKETOFF: Thank you, your Honor. The
14 defense offers Defendant 2, which is a letter from the
15 prosecutor to myself.

16 THE CLERK: For the record, this is
17 Defendant's Exhibit 2.

18 THE COURT: It's entered by agreement as a
19 full exhibit?

20 MR. SHEKETOFF: Yes, your Honor.

21 MS. OLLILA: That's correct, Judge.

22 (Defendant's Exhibit 2 admitted.)

23 THE COURT: Could you just describe that to
24 the jury.

25 MR. SHEKETOFF: Can I just read the part

1 that's not redacted.

2 THE COURT: Certainly.

3 MR. SHEKETOFF: Please note that with respect
4 to witness Nicholas Champagne, the United States intends
5 on filing a motion with the court pursuant to Rule 35
6 Fed Rule Crim Procedure to reduce the term of Defendant
7 Champagne's three-year period of supervised release to
8 one and one-half years. This is dated August 4th, 2015,
9 and I believe there's a further agreement of the parties
10 that this information was also communicated to Mr.
11 Champagne's counsel.

12 MS. OLLILA: That's correct, Judge.

13 THE COURT: All right. So you rest your case?

14 MR. SHEKETOFF: And we rest, your Honor.

15 THE COURT: All right. Okay. Government and
16 defense have rested their entire case then. Is that
17 correct?

18 MS. OLLILA: That's correct, Judge.

19 MR. SHEKETOFF: And, your Honor, can I see you
20 at sidebar?

21 THE COURT: Yes, you may.

22 AT SIDEBAR

23 MR. SHEKETOFF: I think because I put on a
24 case; namely, that one exhibit, I have to renew my
25 motion for judgment of acquittal, so I'm doing that now.

1 THE COURT: Your motion is renewed, it's
2 preserved. I deny it.

3 MR. SHEKETOFF: Thank you, Judge.

4 IN OPEN COURT

5 THE COURT: Members of the jury, we're now
6 going to hear closing arguments in this case. You will
7 hear first from the government, Attorney Ollila.

8 MS. OLLILA: Thank you, your Honor.

9 MS. OLLILA: Good morning.

10 THE JURY: Good morning.

11 MS. OLLILA: Let me first take this
12 opportunity to thank you all so very much for your
13 service. You have all undoubtedly sacrificed a lot to
14 be here. Some of you are losing the opportunity to be
15 back at school starting a new year while others are
16 missing a lot of work that you really can't afford to
17 miss, and all of you are missing precious time away from
18 your families. You have sat patiently and listened
19 intently for a week. So on behalf of the United States,
20 on behalf of Lieutenant Encarnacao, on behalf of
21 Sergeant Norris, Dena Blanco, Diane Cullen, Chris True,
22 and even Cindy Budahn in the back of the courtroom, and,
23 in fact, on behalf of all law enforcement who testified
24 in this matter, we thank you so very much for your
25 service.

1 Ladies and gentlemen, the testimony did
2 establish that the defendant, Alkis Nakos, was the New
3 Hampshire chief of a huge marijuana drug trafficking
4 organization centered in Canada that was responsible for
5 smuggling thousands of pounds of marijuana, high-grade
6 marijuana, from Canada into the United States during the
7 period 2008 to 2014.

8 You also heard that defendant Alkis Nakos's
9 ability to receive the high-grade marijuana occurred
10 because he befriended Mihail Leventis, a high-ranking
11 member of the Canadian drug trafficking organization who
12 the defendant, Alkis Nakos, met while the two were
13 incarcerated together at the New Hampshire State Prison.

14 The testimony established that when the
15 defendant, Alkis Nakos, was released from prison, he
16 traveled to Canada, met with Mihail Leventis, and
17 arranged for the safe passage of marijuana into New
18 Hampshire.

19 The marijuana entered the country through
20 vehicle, on foot through the woods, and through
21 tractor-trailers that routinely transported over a
22 thousand pounds of marijuana on each occasion across the
23 border.

24 The marijuana itself, which you obviously now
25 know costs over \$2,000 a pound, was initially delivered

1 in Home Depot style boxes, but as the organization grew,
2 the marijuana was packaged in 50-pound increments and
3 placed in black style hockey bags that contained the
4 label NH.

5 Dena, please pull up 1H at page one.

6 You know, ladies and gentlemen, that the case
7 against the defendant, Alkis Nakos, all started when a
8 border patrol agent seized a drug ledger at the end of
9 February 2008, February 21st, 2008. The first page of
10 the ledger represented the distribution of 1,300 pounds,
11 and you can see to the right side of that page, it's 300
12 plus 300 plus 300 plus 400. That means that during the
13 end of February 2008 and towards the beginning of
14 March 2008 the co-conspirators are scheduled to
15 distribute 1,300 pounds of marijuana. And you can see
16 that NH, the defendant Alkis Nakos's cell of the
17 organization, is scheduled to receive 50 pounds. And
18 also importantly you can see that there's a two-mil drop
19 schedule. You know that the \$2 million drop occurred
20 because it was intercepted by the Oklahoma State Police
21 Trooper Branson Perry.

22 Dena, please pull up 2F-14.

23 And you know that Trooper Perry contacted the
24 DEA in New Hampshire and Massachusetts because the
25 seizure signaled the existence of an enormous drug

1 trafficking organization.

2 You heard from Special Agent Jean Drouin that
3 a litany of law enforcement officers in over seven
4 states initiated Operation Brownshirt which ultimately
5 led to the arrest and prosecution of over 40
6 individuals.

7 During the investigation law enforcement
8 identified a New Hampshire car rental company located in
9 Derry, New Hampshire, named Buy Here Pay Here that had
10 been renting vehicles to numerous couriers who were
11 transporting the marijuana. Because law enforcement
12 needed to track the couriers to be able to follow them,
13 they started placing GPS systems on the vehicles that
14 the couriers were using.

15 Please pull up 52-O, Dena.

16 By December of 2008 law enforcement placed a
17 GPS tracker on a vehicle that had been rented at Buy
18 Here Pay Here and then watched it travel to this very
19 warehouse in Waltham, Massachusetts. While watching the
20 warehouse, law enforcement observed a tractor-trailer
21 with Quebec plates on it pull into the area and offload
22 what law enforcement knew was marijuana.

23 You may recall that law enforcement also saw
24 two vehicles meet with that tractor-trailer, and law
25 enforcement testified that the occupants of those two

1 vehicles had previously stopped at Home Depot and
2 obtained a number of boxes.

3 Please pull up 5H-2 and 5H-3 and do a split
4 screen, 5H-2 and 5H-3.

5 Law enforcement watched as the vehicles had
6 the Home Depot boxes packed back in their car, and law
7 enforcement knew that those boxes must have contained
8 marijuana. But because only one of those vehicles had a
9 GPS tracker on it, law enforcement contacted a uniformed
10 Massachusetts State Police car and advised it to pull
11 over the vehicle that did not have the tracking device.
12 The vehicle was found to contain 200 pounds of
13 marijuana, all located in those Home Depot boxes. That
14 marijuana was in the courtroom, ladies and gentlemen,
15 and it was introduced into evidence.

16 If you count as just \$2,000 (sic), that small
17 amount of marijuana represented \$400,000.

18 Because the tracking device had been placed on
19 one of the vehicles, law enforcement monitored it as it
20 returned to New Hampshire and ended up at 10 Delaware
21 Avenue, the stash house used by Nicholas Champagne.

22 Dena, please pull up 6A, which is a video, and
23 play that video.

24 By December of 2008 law enforcement obtained
25 video footage of Charles Fowle, the same Charles Fowle

1 you heard talking with Kosmas Koustas so often over the
2 wiretap, arrive at 10 Delaware Avenue, meet with
3 Nicholas Champagne, and obtain 50 pounds of marijuana in
4 that Home Depot box and deliver it to his customers.

5 Okay, Dena. Thank you.

6 Although law enforcement intended to conduct
7 an interdiction of marijuana coming out of 10 Delaware
8 Avenue, before they had the opportunity to do so, there
9 was another seizure and this seizure occurred along the
10 Canadian border. It was the 1,357 pounds of marijuana,
11 and it was seized from another tractor-trailer that was
12 located at the border.

13 Please pull up 52P-1.

14 You heard that the largest amount of the
15 marijuana in that 1,357-pound load was 200 pounds, which
16 represented another \$400,000 worth of marijuana. That
17 200 pounds was labeled NH because it was destined for
18 Alkis Nakos's organization in New Hampshire.

19 By February of 2009 law enforcement in New
20 Hampshire seized 58 pounds of marijuana that had been
21 distributed by Nicholas Champagne to David Couloumbe.

22 Dena, please pull up 9H-5.

23 The marijuana was contained in a dark hockey
24 style duffel bag with a brass-colored lock. The bag
25 also contained a printed label on the exterior which

1 read NH, a clear reference to the Nakos organization.
2 Just like the NH written on 200 pounds of a 1,357-pound
3 load of marijuana.

4 Please pull up 12B-1 and 12B-5 and do a split
5 screen, Dena.

6 Because so many seizures were occurring,
7 ladies and gentlemen, and because it became clear that
8 the New Hampshire stash house had been heated up,
9 Nicholas Champagne left the house in early April 2009,
10 and his marijuana boss, defendant, Alkis Nakos, showed
11 up for the relocation. And you can see him in the dark
12 shirt on the right with the bald shaved head. It's not
13 at all how he looks now.

14 Within two days of leaving the stash house,
15 Nicholas Champagne delivered \$194,000 to two female
16 Canadian couriers.

17 Please pull up 13D-4 and 13D-5 and do the
18 split screen.

19 The cash seized by law enforcement from
20 Nakos's New Hampshire cell meant that Nakos's cell
21 started to falter. By May 2009 law enforcement seized
22 another 100 pounds representing \$200,000 more of
23 marijuana. It was taken from Nakos's organization in
24 New Hampshire. Much like the 58 pounds, the 100-pound
25 seizure seized from Michael Gardner was contained in

1 black duffel style hockey bags with the label NH affixed
2 to the exterior of the bag.

3 Dena, please pull up 17H-4 and 17H-5 and do a
4 split screen.

5 By June 2009 law enforcement executed two
6 search warrants at stash houses located in Vermont at
7 the border of Canada.

8 Please pull up 18K-1 and 18K-2 and do a split
9 screen.

10 Do you remember the testimony of Special Agent
11 Jean Drouin? He identified one of these stash houses as
12 a stash house located in the picture on the left, and he
13 identified that that waterway was right outside that
14 house, and if you look across the water, that land
15 across the way is Canada.

16 During that search of the two stash houses,
17 law enforcement recovered more marijuana, all of which
18 was contained in those exact same hockey dark duffel
19 bags, same exact style of bag seized from Michael
20 Gardner and David Coulombe.

21 You heard that Nicholas Champagne self-
22 surrendered to law enforcement in July 2009. But
23 because Nicholas Champagne had been fending for himself
24 since the age of 12 by selling crack cocaine on the
25 streets, his moral compass at the time refused to allow

1 him to cooperate against the defendant, Alkis Nakos.

2 Nicholas Champagne took his sentence like a man and he
3 served every single day.

4 But Nick Champagne had a lot to live for when
5 he was released. He spent five long years away from his
6 son. Rather than continue the cycle of abandonment in
7 his life, one that his own drug-addicted mother showed
8 him at a terribly horrible young age, Nick decided that
9 his belief about a code of silence and the death before
10 dishonor tattoo on his arm were based upon a horrible
11 false premise.

12 Nick did what he had to do to be a father to
13 his son. He showed up and testified. He told you
14 exactly what happened. Nicholas Champagne openly
15 admitted that he had distributed over 6,000 pounds of
16 marijuana that had entered into the United States
17 through Alkis Nakos's connection with Mihail Leventis.
18 Nicholas Champagne openly admitted to making a lot of
19 money, but Nicholas Champagne has absolutely nothing to
20 show for it now. Nothing but heartache and the
21 unrelenting pain of knowing that he will never get one
22 of those days back with his son. He simply refuses to
23 make that sacrifice again. So no matter how humiliated
24 Nicholas Champagne was when he was asked if he could
25 read, there are not enough loud sighs in the world to

1 break his resilience because he knows he is never going
2 back, and he knows that telling the truth, telling
3 exactly what happened, is the only key to his freedom.

4 So accuse Nicholas Champagne, 55-year-old
5 father, with operating a drug trafficking organization
6 if you must. There is nothing, absolutely nothing, that
7 will break Nicholas Champagne's will. He will hold his
8 head down and wait until it's over because he was here
9 to tell you exactly what happened, and he did. Nick
10 Champagne finally understands, much like a lot of you,
11 much like a lot of us understand, that the false premise
12 of loyalty to drug dealers absolutely pales in
13 comparison to the love a parent has for his child.

14 Nick Champagne openly owned up to his
15 involvement, but he had no ability, none whatsoever, to
16 get the marijuana into the United States from Canada.
17 He had absolutely no pull with Mihail Leventis, a Greek
18 speaker just like the defendant, Alkis Nakos. If Nick
19 Champagne had any influence over Mihail Leventis, why in
20 the world would he be so beholden to the defendant,
21 Alkis Nakos. And why in the world would Nick Champagne
22 give the defendant, Alkis Nakos, so much money if he had
23 the ability to go to Leventis directly himself.

24 That crucial role was held by only one person
25 in this case, ladies and gentlemen, and that was the

1 defendant, Alkis Nakos. Only one person had the
2 connections and ability to ensure the free flow of
3 marijuana into New Hampshire. It was the same person
4 who negotiated a deal that absolutely mandated that he
5 made money off the top of every single pound of
6 marijuana that entered New Hampshire through his
7 efforts. You never heard once, not even once, that
8 Nicholas Champagne traveled to Canada to meet with
9 Leventis because Leventis would have never given
10 Nicholas Champagne the time of day.

11 But you did hear from the defendant's
12 ex-girlfriend, Allison Ouellette, who left in 2009, and
13 she openly said that she and her then boyfriend,
14 defendant, Alkis Nakos, went to Canada to meet with
15 Mike, Mihail Leventis, on at least four occasions.

16 If Alkis Nakos would have stopped the flow of
17 marijuana into New Hampshire, no one had the ability to
18 get it in through the Canadian drug trafficking
19 organization. All of the marijuana roads into New
20 Hampshire led directly through Alkis Nakos and he knew
21 it.

22 He carefully fostered his relationship with
23 Mihail Leventis and even bragged about it to Paul
24 Poirier, the undercover law enforcement officer who was
25 inside Amory Street House of Pizza for over a year.

1 Alkis Nakos openly bragged to Sergeant Poirier how he
2 and his friends smuggled duffel bags of marijuana
3 through the woods at the Canadian border and that they
4 used Indian trails to get it across. He even openly
5 bragged that he was making between 100 -- excuse me, 300
6 and \$400 of profit off of every pound of marijuana that
7 entered into the United States.

8 Alkis Nakos told Sergeant Poirier that he had
9 been in Canada before and was stopped by law enforcement
10 because he was with someone who the Canadian authorities
11 were watching. Alkis Nakos even told Sergeant Poirier
12 that the Canadian authorities took money from him when
13 they stopped him along with his friend.

14 You know that the defendant's bragging was
15 absolutely true. A forensic examination of the
16 defendant's computer seized at his home in June of 2014
17 showed that he had sent an SMS message to a friend which
18 revealed that \$15,000 had been taken from him in Canada,
19 and he said, as you will see yourself, quote, it was a
20 mess.

21 You also know that Alkis Nakos was obviously
22 referring to Mihail Leventis because Mihail Leventis is
23 absolutely someone in Canada who would be watched
24 closely by law enforcement.

25 So, ladies and gentlemen, what exactly was the

1 defense here? Although at times it was confusing to
2 follow, it seemed to be that Nicholas Champagne and
3 Kosmas Koustas were the leaders of the New Hampshire
4 cell of the Canadian drug trafficking organization and
5 that the defendant, Alkis Nakos, was simply an unwitting
6 and loyal friend who had the uncanny ability to always
7 be in the wrong place at the wrong time. But the
8 evidence made clear that that simply wasn't the case.

9 51J, please. And please enlarge that, Dena.

10 Evidence like that found on the defendant's
11 own computer. Why would anyone conduct a Google search
12 on how to erase text messages from their iPhone unless
13 they had something that they didn't want anyone,
14 especially law enforcement, to see.

15 Please pull up 51H at page one.

16 And why keep every single page, over 1,500
17 pages in total, of Operation Brownshirt discovery on
18 your computer for five years after supposedly reviewing
19 it as a legal scholar and favor for a friend whose own
20 criminal defense attorney was apparently incapable of
21 going to law school, practicing law for many years, and
22 understanding the documentation without the defendant's
23 assistance.

24 If you look at the discovery files themselves,
25 ladies and gentlemen, you will see that the defendant,

1 Alkis Nakos, is accessing the documentation two years
2 after Nicholas Champagne's arrest and incarceration.
3 You know that the defendant, Alkis Nakos, obtained
4 documentation on July 9, 2009, shortly after Nicholas
5 Champagne turned himself in because you can see the
6 creation date on that file.

7 But take a look on the line below the creation
8 date. It says: Access date, 11/3/2011. And you heard
9 from Trooper Piche yesterday that that date represented
10 the time that that material had last been accessed. Why
11 in the world would the defendant, Alkis Nakos, need to
12 review the discovery long after Nicholas Champagne had
13 been sent away to a Bureau of Prisons facility and was
14 now located in Pennsylvania? He certainly would need to
15 review that information if he continued to operate as
16 the New Hampshire chief and as such would need to keep
17 that documentation on hand for review.

18 Please pull up 51K and enlarge that, Dena, as
19 much as you can.

20 And ask yourselves, ladies and gentlemen, why
21 defendant, Alkis Nakos, would still be reviewing DEA
22 press releases in December of 2013, some four years
23 after Nicholas Champagne had been arrested and
24 incarcerated. He certainly would need to do so if he
25 continued to act as the New Hampshire chief of the cell

1 and wanted to monitor arrests made by law enforcement.

2 Another interesting aspect of the defense --
3 brought up by defense counsel seemed to consist of an
4 all-out attempt to legitimize all of the monies obtained
5 by defendant, Alkis Nakos, throughout the period of 2008
6 through 2014.

7 Attorney Sheketoff started down the road of
8 trying to get Sergeant Poirier to testify that indeed
9 food was served at Amory Street Pizza. Remember how he
10 talked about Alkis Nakos carrying a bag of flour in?
11 But he quickly abandoned that effort when it became
12 painfully clear that for many years before the
13 defendant's arrest no one was getting food there.

14 Because he made no headway with the successful
15 pizza operation defense, Attorney Sheketoff quickly
16 turned to defendant Nakos's slot winnings at Foxwoods,
17 notwithstanding the fact that the defendant's
18 ex-girlfriend, Allison Ouellette, knew nothing about any
19 significant gambling winnings, and they were together
20 through the end of 2009.

21 So let's talk about the money, ladies and
22 gentlemen.

23 Exhibit 60B, please. And please enlarge that,
24 Dena.

25 You know from Defendant Nakos's St. Mary's

1 Bank account that he had over \$130,000 in the bank in
2 December 2009. You also know from his taxes that you
3 saw from his very own accountant that he claimed to be a
4 pizza chef at Amory Street Pizza who made \$30,000 in
5 2009. You also know that the defendant didn't hit the
6 slots at Foxwoods until well into 2010. So you need to
7 ask yourselves this, ladies and gentlemen, where did
8 that \$130,000 come from?

9 Well, you certainly know that 2008 and 2009
10 were banner years for Alkis Nakos's New Hampshire cell
11 of the marijuana drug trafficking organization.

12 Do you remember when Special Agent Drouin
13 toward the end of his testimony was identifying amounts
14 of money that had been turned over to the Canadian drug
15 trafficking organization by Alkis Nakos's members of his
16 cell?

17 22C at page eight, Dena. And enlarge that.

18 This ledger says: Zinger, pick up paper from
19 NH, \$350,000, and this was July 19th, 2008.

20 Please pull up 22D at page four. And enlarge
21 that, Dena, at page four.

22 MS. BLANCO: 45.

23 MS. OLLILA: I'm sorry, Dena. 45, I'm sorry.

24 Two weeks earlier on July 1st, 2008, \$275,000
25 was obtained by the Canadians from the defendant's New

1 Hampshire cell.

2 22E at page ten.

3 And just one month later, on August 3rd, 2008,
4 another \$200,000 was provided by Nakos's organization to
5 the Canadian drug trafficking organization.

6 If the defendant's New Hampshire cell is
7 paying out that much money and receiving load after load
8 after load of marijuana, sometimes receiving between 100
9 to 400 pounds of marijuana a month, just as testified to
10 by Nicholas Champagne, that means that the defendant,
11 Alkis Nakos, was making a lot of money off the top of
12 every pound of marijuana that was being distributed in
13 New Hampshire, and, ladies and gentlemen, that is
14 exactly why he had \$130,000 in the bank in 2009.

15 Now, I'm sure that you also caught what
16 Attorney Sheketoff was trying to do with the money
17 aspect. He seemed to handle it in two ways. First, he
18 tried in vain to get Sergeant Paul Poirier, the
19 undercover inside Amory Street Pizza, to testify that
20 the poker machines at Amory Street Pizza, located in one
21 of the poorest areas of Manchester, were making huge
22 amounts of money. He must have done this because he
23 wanted to be able to justify amounts of cash and
24 expenditures that you were going to see from the records
25 themselves.

1 But Attorney Sheketoff's attempt was clear to
2 Sergeant Poirier, and Sergeant Poirier testified that he
3 was advised by the defendant's own father that all three
4 of those one-dollar poker machines together made \$500 a
5 week on the best week.

6 Exhibit 43P-4 and 43-5. Please do a split
7 screen.

8 And this makes sense, doesn't it, ladies and
9 gentlemen? Do you actually think that there would be a
10 flood of gamblers going to Amory Street Pizza to have a
11 pizza, sub, or a beer and play the one-dollar video
12 poker machine? Of course not. Sadly enough the
13 individuals who went there to lose their entire
14 paychecks were undoubtedly just squeaking by in life.
15 Unlike the defendant, Alkis Nakos, they didn't have a
16 lot of money to lose. And if they did, they wouldn't be
17 at Amory Street Pizza. They'd be sitting right next to
18 the defendant at Foxwoods.

19 So how else did Attorney Sheketoff try to
20 justify the money? Well, because the video poker
21 machine attempt was failing, he turned to Defendant
22 Nakos's amazing skill as a gambler. After all, not only
23 is the defendant a scholar whose legal prowess was
24 needed by Nicholas Champagne's attorney, he also was a
25 professional gambler.

1 But the funds don't add up, ladies and
2 gentlemen. You already know that the defendant, Alkis
3 Nakos, had \$130,000 in the bank long before he won any
4 money gambling. But even if he tries to claim that his
5 lavish lifestyle was a result of his lottery winnings,
6 the figures don't add up.

7 Remember, first, that defendant, Alkis Nakos,
8 bragged to Sergeant Poirier about being a high roller at
9 Foxwoods. He said that his bets were so high that he
10 was placed at the high-roller table, and that fellow
11 gamblers would be forced away from the table because
12 they couldn't keep up with his high-dollar bets.

13 Well, you know that when the defendant won at
14 Foxwoods, it was on the slot machines, not by playing
15 blackjack or poker. So how was it then that an
16 individual making \$30,000 a year at a pizza shop would
17 have the ability to be a high roller at Foxwoods long
18 before he even won any money there. He had the ability,
19 ladies and gentlemen, because he was New Hampshire chief
20 of the marijuana trafficking organization and he had
21 plenty of money to burn.

22 How much money did he have to burn? Well, you
23 know that during 2011 through 2013 alone he had four
24 different Mercedes Benz vehicles. You actually heard
25 from Sergeant Poirier that the defendant, Alkis Nakos,

1 acquired two new Mercedes Benz vehicles within one week
2 of one another. And he actually bragged that one of
3 them cost \$65,000. And you certainly know that the
4 defendant was also bragging to Sergeant Poirier about
5 how he was going to special order a \$150,000 Mercedes
6 Benz and it would take over a year to receive. The
7 amount for that special order Mercedes Benz would have
8 completely obliterated every cent of his winnings from
9 Foxwoods.

10 And yet you saw, ladies and gentlemen, that
11 seized at the defendant's residence were money bands
12 that represented an amount over \$170,000 in cash. And
13 you know that the defendant had at least \$50,000 in home
14 renovations done because he sued the contractor, David
15 Gibbons, for the recovery of \$100,000. And you heard
16 that the defendant hired David Gibbons and only had one
17 condition for hiring him. And that is that David
18 Gibbons ensure him, the defendant, Alkis Nakos, that
19 there be no paper trail.

20 In 2012 the defendant claimed that he lost
21 \$30,000 in jewelry that had been taken from his
22 residence during a home burglary. Among the evidence
23 taken were a \$9,000 Rolex, a \$9,900 necklace, a \$7,000
24 gold medallion, and a \$4,000 ring.

25 Please pull up 50A at page one, Dena.

1 And this is the defendant's 2013 tax filing.
2 You can see that he claimed during that year to make
3 \$18,000 at Amory Street Pizza.

4 And you know that on March 17, 2014, New
5 Hampshire State Police Trooper Stefan Czyzowski stopped
6 Alkis Nakos in yet another brand-new Mercedes Benz. You
7 know that Trooper Czyzowski took \$9,000 from the
8 defendant, some of which included Canadian currency.
9 And you also know that the same trooper took \$9,000 from
10 Christopher Ranfos who was a passenger in the
11 defendant's Mercedes Benz.

12 And, ladies and gentlemen, this is the very
13 same Christopher Ranfos two days earlier on March 15th,
14 2014, who met with Kosmas Koustas, obtained an amount of
15 marijuana, and then distributed it to John Horne.
16 Because law enforcement seized it.

17 This is the very same Christopher Ranfos that
18 Attorney Sheketoff tried to claim was going to see
19 Kosmas Koustas because he was an HVAC guy. And you
20 heard the wire yourself. Christopher Ranfos said I'm
21 going to come over and check out the heat. Attorney
22 Sheketoff tried to convince you that that was a
23 reference to HVAC. But you heard that law enforcement
24 that same day Christopher Ranfos went over there,
25 followed him, saw him deliver marijuana to John Horne,

1 and then stopped John Horne and seized marijuana.

2 At the time of the search of Defendant Nakos's
3 residence in June 2014, law enforcement recovered over
4 \$12,000 in cash. If Attorney Sheketoff wants to claim
5 that that cash was left over from Defendant Nakos's
6 Foxwood winnings, why would the defendant keep it in
7 small denominations. You need to ask yourselves this,
8 ladies and gentlemen. What would the defendant need
9 with 140 \$20 bills? And why would he feel the need to
10 hide that money in two separate shirts in his master
11 bedroom closet, two years after his winnings from
12 Foxwoods had ended. This is particularly so because the
13 defendant had been burglarized in 2012, and he certainly
14 wouldn't want to leave that much currency in his home.

15 And you also saw that he had no problem
16 whatsoever keeping a lot of money in the bank. So why
17 keep the money in the closet at all?

18 He kept it there, ladies and gentlemen,
19 because this was money that Kosmas Koustas had delivered
20 to him, and he simply hadn't had the time to bring it to
21 the bank and deposit it. That's why it was there.

22 If you just add up the amount taken from
23 defendant, Alkis Nakos, when Trooper Czyzowski stopped
24 him on March 17th, \$9,000, and the \$12,000 that was
25 seized from the defendant at his house, that is two days

1 of money, two days. If you add that up, that's \$21,000.
2 That's more than the defendant claimed in total to be
3 making that year when he claimed \$18,000.

4 And you know that the defendant must have had
5 Canadian currency in his wallet in 2014 because he was
6 always traveling to Canada to meet with Mihail Leventis
7 and foster his relationship so that his New Hampshire
8 cell of the drug trafficking organization could continue
9 to receive drugs for distribution in New Hampshire.

10 Defendant Nakos himself was moving the chess
11 pieces around the board just as he had done since 2008
12 and just as he continued to do until 2014.

13 So how exactly do you know that Defendant
14 Nakos's was Kosmas Koustas's boss, just as he had been
15 the boss of Nicholas Champagne.

16 Start from the very first night of the
17 wiretap, October 23rd, 2013, because the answer came
18 within the first several calls of the Title III
19 intercept. During the call that Kosmas Koustas made to
20 Jeremy Blevens during the very first night, Kosmas
21 Koustas was on his way back from Worcester,
22 Massachusetts, where he had obtained a load of
23 marijuana. During their conversation Jeremy Blevens
24 said to Koustas: All right, can you get that girl? A
25 clear reference to a request for MDMA, also known as

1 Molly, a girl's name.

2 You will hear that Koustas doesn't respond yes
3 because he has no ability to. He needs to check with
4 his boss, Alkis Nakos. Instead of saying yes right
5 away, Koustas replies: Ah, I don't know. I can make a
6 phone call.

7 Dena, please play 38A-2A.

8 (Played recording.)

9 When Attorney Sheketoff questioned Trooper
10 Norris about this conversation, he pointed out that
11 after his conversation, Kosmas Koustas called someone by
12 the name of Brandon Lachance. The clear message that
13 he, Attorney Sheketoff, was trying to convey to you was
14 that it was Brandon Lachance who was the source of
15 supply for the MDMA. That interesting strategy lingered
16 for a while until United States made it clear that
17 Brandon Lachance cooperated with law enforcement and
18 continued to do so long before the two pounds of MDMA
19 were seized from Kosmas Koustas's residence. The only
20 person who Koustas was calling about the MDMA was his
21 actual boss, the defendant, Alkis Nakos.

22 Dena, can you go to minute marker six, and
23 pause it when you get to six.

24 (Pause.)

25 During the very same conversation on

1 October 23, 2013, Kosmas Koustas and Jeremy Blevins talk
2 about meeting because Jeremy Blevins wants to pay Kosmas
3 Koustas for a prior shipment of marijuana that he had
4 received. During the conversation Jeremy Blevins tells
5 Kosmas Koustas that even if Koustas can't get the MDMA,
6 Blevins still wants to meet to turn over the monies that
7 he owed. In response Kosmas Koustas says: No, I got
8 you. No, ah, it's not even mine.

9 Play it, Dena.

10 (Played recording.)

11 | Thank you.

12 Koustas's comment, which he had no idea was
13 being recorded by law enforcement, shows that he is
14 referencing the fact that he has a boss, defendant,
15 Alkis Nakos. Kosmas Koustas and Jeremy Blevens engage
16 in another conversation the very same night because
17 Kosmas Koustas told Jeremy Blevens that he would check
18 on the availability of the MDMA.

19 When Kosmas Koustas calls Jeremy Blevens back,
20 he says: Ah, I was just about to call you, too, and
21 this mother-f'er boss, he's at the Red Sox game.

22 | Please play 38A-2F.

23 (Played recording.)

24 Now, Dena, please pull up 51L and turn to page
25 seven. And I want you to enlarge that.

1 Who is the boss, ladies and gentlemen, who
2 would be at a Red Sox game? He's the same boss who went
3 to Celtics games, was at center ice for Montreal
4 Canadian games, and Patriots games. The stored messages
5 on the defendant's computer show exactly who it was.
6 You are looking at page seven of those records. And
7 this is a message that the defendant himself sent.
8 Crazy moments, we had lots. St. Thomas, Superbowl,
9 Vegas, Cali, Greece, Rome, Pats games, Celtics, strip
10 clubs, Montreal, Foxwoods, Boston, too many fun times.

11 All of this, ladies and gentlemen, on \$30,000
12 a year from a pizza shop that doesn't even sell pizza.

13 It is the defendant, Alkis Nakos, the very
14 same person who spent \$650 at Gucci on Fifth Avenue in
15 New York during a five-minute period in 2010. It's the
16 very same person that David Sweeney spoke with outside
17 of Amory Street Pizza in January 2014 when Alkis Nakos
18 told a fellow drug dealer, one he had done time with at
19 the New Hampshire State Prison, that Kosmas Koustas was
20 running his, Alkis Nakos's, product. Alkis Nakos told
21 David Sweeney that he, Alkis Nakos, had exotics, a clear
22 reference to high-grade Canadian marijuana. And he also
23 told David Sweeney that he had Molly, a clear reference
24 to MDMA.

25 Doesn't it all make sense, ladies and

1 gentlemen? Defendant, Alkis Nakos, advertises the
2 availability of his product to fellow drug dealers that
3 he trusts and then sends his lieutenant in to carry out
4 his own work.

5 It's exactly what the defendant did with John
6 Venturini after Nicholas Champagne was arrested. Do you
7 remember that John Venturini testified that after
8 Nicholas Champagne had been arrested, remember that John
9 Venturini was best friends with Nicholas Lawyer and
10 Nicholas Lawyer killed himself and John Venturini had a
11 motorcycle accident that same night? You heard John
12 Venturini testify that after Nicholas Champagne, who had
13 been providing them with marijuana, had been arrested,
14 who showed up at his residence? The defendant, Alkis
15 Nakos. During the conversation Alkis Nakos asked John
16 Venturini how much marijuana he was receiving.

17 Shortly after that conversation, Kosmas
18 Koustas showed up and showed John Venturini an amount of
19 marijuana. It's because the defendant, Alkis Nakos,
20 sent his new lieutenant, Kosmas Koustas, to show
21 Venturini the product.

22 Kosmas Koustas was consulting with the
23 defendant, Alkis Nakos, about the availability of the
24 MDMA on October 23rd, 2013. It was the very same person
25 that Kosmas Koustas called four times on October 22nd,

1 2013, the day before he traveled to Massachusetts in
2 order to obtain that load of marijuana.

3 Please pull up 38RR at page 87.

4 You know that Kosmas Koustas picked up the
5 marijuana on October 23rd, 2013, because when he was
6 traveling back from Massachusetts, he called Charles
7 Fowle and told him that he'd be by with the marijuana.
8 After law enforcement saw Koustas arrive and quickly
9 depart from Charles Fowle's residence in Manchester,
10 Kosmas Koustas called Charles Fowle back and they
11 discussed the quality of the marijuana.

12 Please play 38A-2H.

13 (Played recording.)

14 Although you knew that Kosmas Koustas would
15 never, never engage in a drug-related conversation with
16 the defendant over the telephone, you would expect,
17 wouldn't you, that at some point in time after Kosmas
18 Koustas successfully delivered the marijuana to Charles
19 Fowle and Jeremy Blevens, that he would check in with
20 his boss.

21 So what did the phone records show the day
22 after that delivery on October 24th, 2013?

23 Please pull up 38RR at page 94.

24 The records show that Kosmas Koustas and the
25 defendant, Alkis Nakos, spoke several times on that

1 date. Now, if this doesn't convince you, ladies and
2 gentlemen, that Alkis Nakos was the boss and Kosmas
3 Koustas his lieutenant, then focus on another day when
4 you know that Kosmas Koustas traveled to Massachusetts
5 in order to obtain a quantity of marijuana,
6 December 5th, 2013. Would you expect that Defendant
7 Nakos's lieutenant, Kosmas Koustas, to touch base with
8 his boss the day before he traveled to Massachusetts on
9 December 5th? And the day of December 5th? Of course
10 you'd expect that.

11 Please pull up 39EE at page 99.

12 These records show that on December 4th, 2013,
13 the day before Koustas traveled to Massachusetts to pick
14 up the marijuana, he and Alkis Nakos spoke four times,
15 one conversation of which lasted for 17 minutes. And
16 would you expect Kosmas Koustas to speak with his boss
17 on December 5th in order to still confirm that he needed
18 to go to Massachusetts to pick up the marijuana? Of
19 course you would.

20 Turn to page 103, Dena.

21 Before Kosmas Koustas traveled to
22 Massachusetts, he and Alkis Nakos engage in a
23 conversation that lasts about eleven minutes.

24 The wiretap did show that Kosmas Koustas
25 arrived in Massachusetts at about 7:53 p.m. on

1 December 5th because he calls the courier once he
2 arrives and says: Is that you over there?

3 You know that Koustas met with the courier at
4 8:00 because law enforcement followed him from his place
5 of employment to 4 Colebrook Road in Millbury,
6 Massachusetts, the location of one of the stash houses.
7 You also know that it takes over an hour to get back to
8 Manchester, New Hampshire from Massachusetts.

9 So would you expect Kosmas Koustas to be
10 checking in with his boss over his clean telephone as he
11 traveled back to New Hampshire? Yep, you would.

12 Turn to page 106.

13 You can see that right before Kosmas Koustas
14 arrived back in New Hampshire at 9:37:31 he contacted
15 defendant, Alkis Nakos. And you also heard that Kosmas
16 Koustas on that date went to 140 South Porter Street in
17 Manchester, New Hampshire, and that was the residence of
18 Kosmas Koustas's father.

19 Well, how do you know that 140 South Porter
20 Street ties into this conspiracy? You absolutely know
21 that because when law enforcement executed a search
22 warrant at that residence, they seized this duffel bag,
23 the same style duffel bag that law enforcement had been
24 seizing all along. Inside that duffel bag was this tag,
25 Diamond Kush times 50 on one side and Boston on the

1 other.

2 Kosmas Koustas -- much like Nicholas Champagne
3 used 10 Delaware Avenue, Kosmas Koustas was using 140
4 South Porter Street as a stash house.

5 Sergeant Norris testified that Kosmas Koustas
6 planned to travel back to Massachusetts on December 6th.
7 You will recall that. But something happened on
8 December 6th and Kosmas Koustas's plans changed. How
9 would Kosmas Koustas find out if his December 6th trip
10 to Massachusetts was cancelled? He could find out if he
11 had contact with the one and only person who had direct
12 links to the Canadian upper echelon.

13 Turn to page 39EE at page 109.

14 You can see that during the morning of
15 December 6, 2013, Kosmas Koustas received an incoming
16 call, incoming call, from defendant, Alkis Nakos, and
17 you can see that they spoke for 39 minutes. It had to
18 have been that Kosmas Koustas learned from defendant
19 Alkis Nakos, the only one who had direct contact with
20 the Canadians, that the marijuana load had either been
21 cancelled or postponed.

22 Wouldn't you obviously assume at this point in
23 time, ladies and gentlemen, that the Massachusetts
24 courier who Koustas had met with the day before on
25 December 5th would have learned that that marijuana

1 shipment was either cancelled or delayed? Although you
2 think that the Massachusetts courier would know, he
3 actually didn't, and the wiretap showed that it was
4 actually Kosmas Koustas who informed him.

5 Play 38A-2Q.

6 (Played recording.)

7 Okay thank you.

8 The courier says to Koustas: I was supposed
9 to have gotten that for you, but I haven't heard from
10 them yet. Koustas says: It's going to be no good, Roy,
11 and the courier says: Did you hear it's going to be no
12 good? And Koustas says: Yeah, no go, maybe tomorrow or
13 the next day.

14 How would Kosmas Koustas be privy to such high
15 level information? How could he receive it? He
16 certainly could if he had a 39-minute conversation with
17 the defendant before contacting the -- before the
18 Massachusetts courier contacted him.

19 And you know that the defendant, Alkis Nakos,
20 would certainly tell his own lieutenant if the plans had
21 changed.

22 The wiretap also demonstrated that, although
23 marijuana was cancelled for delivery on December 6th, a
24 load actually came in on December 7th because law
25 enforcement followed Kosmas Koustas to Massachusetts and

1 then back to Manchester again. As he had done on
2 December 5th, Kosmas Koustas traveled to 140 Porter
3 Street. But where did he go after? He went to 366 Arah
4 Street, the defendant's residence.

5 Contrary to Attorney Sheketoff's repeated
6 accusations, there should be no doubt that Nicholas
7 Champagne was not the chief of this New Hampshire cell.
8 He couldn't have been because law enforcement seized
9 marijuana in 2014 from Kosmas Koustas's residence that
10 had the very same NH markings on it as the marijuana had
11 in 2008 and 2009.

12 Please pull up 7E-12.

13 Do you remember yesterday when Sergeant Norris
14 held up the one pound of marijuana seized from Kosmas
15 Koustas's white van and I had him point out the markings
16 on the top and one of the markings was NH?

17 When law enforcement seized that pound of
18 marijuana, Nicholas Champagne was still in jail in
19 Pennsylvania. So unless you want to believe that
20 Nicholas Champagne somehow miraculously had the ability
21 to run a drug trafficking organization from jail, you
22 must be left with a firm understanding that NH
23 represented Defendant Alkis Nakos's marijuana
24 trafficking organization.

25 Although Nicholas Champagne was an incredibly

1 proud man and although he refused to believe that anyone
2 was his boss, he, like everyone else in New Hampshire
3 receiving marijuana, was beholden to only one person,
4 the defendant, Alkis Nakos.

5 Nick Champagne was beholden to Alkis Nakos.
6 Kosmas Koustas was beholden. Charles Fowle was
7 beholden. Jeremy Blevens was beholden. David Coulombe
8 was beholden. Michael Gardner was beholden. Corey
9 Buchan was beholden. Christopher Ranfos was beholden.
10 And Andre Watson was beholden. No one in New Hampshire
11 received marijuana or MDMA without Alkis Nakos first
12 organizing its entry and distribution into New
13 Hampshire.

14 He was a classic organizer, supervisor, and
15 manager of a continuing criminal enterprise that
16 conducted innumerable drug transactions in New
17 Hampshire.

18 And let me point out something that is very
19 important for you to remember, ladies and gentlemen. As
20 soon as I'm finished and counsel's finished, Judge
21 McCafferty is going to instruct you on the law, and one
22 of the things that she is going to instruct you is that
23 you must be unanimous as a jury, that there were at
24 least three drug transactions that are attributable to
25 the defendant, and you must be unanimous with respect to

1 the three that you pick.

2 Although this evidence demonstrated without
3 any question that there were too many drug transactions
4 to count, you could certainly pick from among the
5 following list of just ten as the three.

6 The December 23rd, 2008, distribution of
7 marijuana at 10 Delaware Avenue by the courier who had
8 brought it there from the warehouse in Massachusetts.

9 The December 30th, 2008, distribution of
10 50 pounds to Charles Fowle by Nicholas Champagne at 10
11 Delaware Avenue.

12 The January 21st, 2009, seizure of 1,357
13 pounds of marijuana on the Canadian border, 200 pounds
14 of which were marked NH because they were intended for
15 distribution by defendant's organization in New
16 Hampshire.

17 The February 24th, 2009, 58-pound seizure from
18 David Coulombe after he received it from Nicholas
19 Champagne.

20 The May 27th, 2009, 100-pound seizure from
21 Michael Gardner.

22 The October 23rd, 2013, wiretap delivery of
23 marijuana to Charles Fowle by Kosmas Koustas.

24 The November 2013 wiretap MDMA distribution by
25 Kosmas Koustas to Jeremy Blevens.

1 The December 5th, 2013, wiretap receipt of
2 marijuana by Kosmas Koutras from the courier in
3 Massachusetts.

4 And, of course, the December 7th wiretap
5 receipt of marijuana by Kosmas Koutras from the courier
6 in Massachusetts.

7 And, finally, the March 30th, 2014, possession
8 with the intention of distributing the two pounds of
9 MDMA that was seized from Kosmas Koustas's residence,
10 along with the one pound of marijuana that was seized
11 from him.

22 Alkis Nakos was a major drug trafficker in New
23 Hampshire for a very long time and his reign comes to an
24 end today. Thank you.

25 | THE COURT: Attorney Sheketoff.

1 MR. SHEKETOFF: Thank you, your Honor.

2 MR. SHEKETOFF: I didn't realize until that
3 closing argument that I was actually on trial here.

4 I'm going to talk about the law a little bit,
5 but the judge is supreme on the law. Anything she says
6 about the law that I have said something different,
7 please disregard my comments. And I'm obviously going
8 to mostly talk about the facts, but you are supreme on
9 the facts. Your memory controls, not mine. If I say
10 anything about the facts that differ from your memory, I
11 apologize. You're supreme.

12 Now, my client is presumed to be innocent.
13 That presumption by itself is sufficient to acquit him.
14 He's to be treated as if he was sitting in the audience,
15 made to sit up here.

16 And of course in this case you learned
17 something at the very beginning when you were being
18 selected as jurors -- you made a pledge about this. You
19 learned that he was in jail. How does he know these
20 people? It's not unfortunate bad luck. He was in jail
21 with this crew. He was in jail with them, for years.
22 He got out in 2005. Leventis got out in 2006, and
23 Champagne got out in 2007. He was in jail with them.

24 But you all said, and I'm sure you're going to
25 live up to it, that the evidence about that would be

1 limited in your mind to a specific thing, how he got to
2 know these people, and it wouldn't affect the
3 presumption of innocence.

4 Perhaps the fact that he was in prison, and
5 you've learned about that as part of this case, is a
6 reason that they feel they can just conduct a smear
7 campaign, just smear him.

8 He's presumed to be innocent. And that
9 presumption by itself is sufficient to acquit him unless
10 and until, if ever, the government convinces you beyond
11 a reasonable doubt. Now, that's a term that's pretty
12 well understood. But it's a different scale than we use
13 even in the most important affairs of our daily lives, a
14 significantly different scale. Am I going to get
15 married? Am I going to move? Am I going to change
16 jobs?

17 We don't do that on surmise and conjecture.
18 We do it on what we call a preponderance of the
19 evidence. We put the evidence in the scale and we weigh
20 it. 51 percent, I guess I'll change jobs.

21 That's not the standard we use here. We use
22 beyond a reasonable doubt. A much more onerous standard
23 for the government to reach, much more onerous. And in
24 most of our daily affairs, even important things, we
25 often get to change our mind. You don't get to change

1 your mind.

2 Verdict means speak the truth. When you come
3 in and speak the truth, the question you are asked to
4 speak the truth to, has the government convinced you
5 beyond a reasonable doubt. If your answer is yes, you
6 don't get a chance tomorrow or the day after or whenever
7 you return with a verdict and say, geez, you know, maybe
8 I was too hasty. No, this is not a decision that you
9 can change your mind about.

10 All right. The prosecutor says he would
11 never, never, ever talk on a dirty phone. He would
12 never talk drugs on that phone. Okay. And that's out
13 of one side of her mouth. On the other side of her
14 mouth, he's warning him all the time on that same phone.
15 He's warning him. The thing's not going to go down
16 today. Which is it? He never talked on that phone or
17 he does?

18 Now, you're going to have the Metro PCS
19 records of my client's phone. You're going to have
20 them, and of Kosmas Koustas's phone. You're going to
21 have these records. And they go back for a long time.
22 You're going to see that there's a baseline. I asked
23 Trooper Norris about this. There's a baseline. Pick
24 any day they're talking to each other.

25 Now, they did capture my client's voice on

1 this phone for 30 days in March of 2014, this clean
2 phone that they can only get up on if it's dirty.
3 That's the evidence they presented to you. Oh, it took
4 them a while to get up on it, but it's dirty so they got
5 up on it.

6 They have -- and you can count them because
7 they're in the Metro's records. They have at least 26
8 phone conversations between Kosmas Koustas and my client
9 that they recorded, and they played not a single one to
10 you, not a one.

11 I told you in my opening that this case would
12 be about the cooperators. Turns out they called three
13 of them, Sweeney, Venturini, and Champagne. That's what
14 the case is about. All the rest of the case is smear or
15 nonsense. \$130,000 in 2009. Trooper Norris, do you
16 have every single one of his bank records? Yes, I do.
17 Do those bank records indicate where deposits come from,
18 if they're checks, if they're cash? Yes.

19 But they don't introduce the bank records. Do
20 you think if they could show that there's no explanation
21 for the \$130,000, we wouldn't see the bank records?
22 Please, this case has been investigated since 2008.
23 That's a smear.

24 Oh, his girlfriend, his first girlfriend,
25 Allison Ouellette, she didn't see him gambling. He's

1 trying to put this on gambling winnings. Allison
2 Ouellette told you she left in November 2009. She I
3 suggest to you was the most honest witness we had in
4 this case, and you know because you heard from Allison
5 Ouellette, you saw her cry at the idea that she would be
6 testifying against him. This is his ex-girlfriend, not
7 his present girlfriend. This is someone he hasn't been
8 with since November of 2009. You know why he's
9 different.

10 And the Sweeneys of the world and the Nick
11 Champagnes of the world and Kosmas Koustases of the
12 world and the John Venturinis of the world. You know.
13 You saw her. You saw what she did for a living. She
14 told you. She vindicates his personality and his
15 lifestyle. You think about that. He was with this
16 woman for five years. That's a smear.

17 Oh, he had four Mercedes Benz. Trooper
18 Norris, do you have the Mercedes Benz records? Yes.

19 Do you think if he spent an inordinate amount
20 of money on those Mercedes Benz, if he'd bought a
21 \$60,000 Mercedes Benz as opposed to lease one, we
22 wouldn't have had the keeper of the records from
23 Mercedes Benz to tell us, wow, look at all this money.

24 Allison Ouellette left him in 2009. His
25 accountant told you, 2011 he won over \$108,000. Oh,

1 Allison Ouellette doesn't know anything about it. Yeah.
2 She's gone by then. In 2012 he wins over \$75,000.
3 Okay. Making it up? His accountant's making it up? He
4 didn't have the Foxwoods records? Trooper Norris, do
5 you have the Foxwoods records? Oh, yeah, got 'em.
6 Keeper of the records here to show you the Foxwoods
7 records to say he didn't make that money there? Nope.

8 Oh, he lives in a mansion, a 1,200-square-foot
9 mansion according to Allison Ouellette that they got for
10 no money down. We've got hundreds of pictures of
11 marijuana. Do we have a picture of that house? That's
12 a smear.

13 Trooper Norris, when did you learn about the
14 fact that he sued the builder? Yesterday.

15 That's what a criminal does. He tells the
16 builder let's make this cash. I don't want any paper
17 trail. And then I'm going to sue you, in a courthouse,
18 for the public to know about it.

19 Oh, and I have the FBI agent who visited used
20 car on my computer -- I mean, I do a Google search on my
21 computer about the FBI agent. But Mr. Builder you never
22 mentioned to him?

23 He paid him in these money bands. These money
24 bands have names on them and dates, many of them. The
25 money comes out of the bank. Are there cash transaction

1 report requirements? Yes. Did he generate cash
2 transaction reports that notify the world that he's
3 dealing in large sums of cash? Yes. Oh, that's a
4 typical drug dealer. Put it in the bank and then take
5 it out in money bands. There are records of these
6 things. They didn't present them. That's called a
7 smear.

8 Do you have a financial analyst? Do you have
9 a forensic accountant that works for the New Hampshire
10 State Police or the U.S. Attorney's Office? Trooper
11 Norris, I don't know. I don't know.

12 You can contrast him with DEA Agent Jean
13 Drouin. When I asked Jean Drouin a question, I get the
14 same kind of answer that the prosecutor gets. The
15 truth.

16 The money is a smoke screen. It's a -- he
17 bought a Gucci belt. Wow. He must be a drug dealer.
18 He bought a Gucci belt.

19 Oh, the poker machines at Amory Street House
20 of Pizza, they don't make any real money. I mean, his
21 father told somebody, basically a stranger who used to
22 hang out there, you know, 50 times over the course of a
23 year and a half, we only make \$500. His father must
24 have been telling the truth. I mean, when you're
25 talking to an undercover agent you always tell the

1 truth.

2 How about the other part of what the
3 undercover said? That somebody else in there said those
4 machines used to generate 3 or \$4,000 a week.

5 If you really want to attack him for money,
6 then do a real job at it. Do something real. Don't
7 throw mud at him. That's called smearing someone.

8 Now, this case -- by the way, I want to talk
9 about that, the guy from the Alcohol -- the
10 investigator. My client, according to him, told him
11 that he used to smuggle, him and his friends, Canadian
12 marijuana across the border, and in the same
13 conversation you may recall he said that was a long time
14 ago. How do you know it was a long time ago? Jean
15 Drouin told you why it was a long time ago. Because he
16 told the Alcohol guy it cost him \$800 a pound.

17 Now, in 2008 -- you just heard the prosecutor
18 repeat it -- the least you could get a pound of Canadian
19 marijuana for was \$2,000. That's if you were super
20 connected. \$2,000. He's not getting an \$800 pound in
21 2008. Jean Drouin told you that's from yesteryear.

22 As I said in my opening, this case comes down
23 to those three cooperating witnesses. It does. Look at
24 all the other things my client does. He gets stopped in
25 the car and he's got cash on him and his diaphragm is

1 making it impossible for him to breathe.

2 No, it's not. He's totally cool and
3 collected. He's on his way to Foxwoods with the cash,
4 the kind of cash he usually goes there with, and if he
5 didn't usually go there with that kind of cash, you
6 would have seen the Foxwoods records.

7 And there's nothing in the car, nothing. When
8 they search his house they get these money bands in a
9 glass jar that's in plain view. There's no drugs,
10 there's no ledgers, there's no scales, there's no burner
11 phones. He keeps the same phone number for years and
12 it's registered to his name. He has bank accounts in
13 his name. The cars are in his name. The mansion's in
14 his name.

15 So before I turn to these cooperators --
16 because I suggest to you they're the key to the case.
17 The prosecutor, you know, even called Mr. Champagne Nick
18 during her closing argument. Nick, her pal. If you
19 believe Nick, you know, my client's guilty. That's what
20 it comes down to. But you have to believe Nick.

21 Look at this investigation. It went on
22 forever. This is not some week that they had or two
23 weeks. All these different agencies, all the tools that
24 you've learned about, the ability to get text messages
25 from the phone company that are historical, the ability

1 to get phone records, the ability to wire people up
2 without a court order, to put GPS devices on things, to
3 tap phones, to put up pole cameras. He doesn't even
4 know -- Trooper Norris doesn't even know how long that
5 camera was up there. It was up for over a year. He
6 doesn't even know. The ability to do these forensic
7 examinations, you know, where are the drug ledgers on
8 the computer? Where's the paper ledgers? Just enormous
9 tools that go through every piece of electronics you've
10 ever had. And what do they come up with?

11 I will tell you what they come up with. And
12 the prosecutor defended it again today. The
13 October 23rd, 2013, Red Sox World Series game. And Mr.
14 Koustas is not at the World Series. And you listen to
15 that tape again. You listen to it as many times as you
16 want. You write down the word "bounced" and that's what
17 you'll hear. You write down the word "boss," maybe
18 you'll hear that. I suggest to you it's "bounced."

19 He's on his way to Massachusetts to pick up
20 the drugs, but he has -- the marijuana. But he has this
21 important phone conversation. They played it for you.
22 They played part of it or most of it again today. Two
23 hours apart with this guy Blevens, the Molly guy. 6:30,
24 8:30 p.m. 6:30 p.m., hey, I want that G, I want that
25 girl, I want that Molly, I want that MDMA. I will have

1 to call you back on it and I'll have to check. I'll
2 have to make a phone call.

3 Two hours later he's obviously made the phone
4 call because he says the guy bounced. He's at the Red
5 Sox game. They laugh about being jealous, about maybe
6 we'll never see the Red Sox in the World Series again.
7 Who knows.

8 So there's got to be a call in there. There's
9 got to be. And if there was a call in there to my
10 client, you know what Trooper Norris would have said?
11 He would be giving my speech. He would have said -- he
12 tells him he's going to make the call. Boom, there it
13 is, the call to your client. Boom, he tells Blevens he
14 can't do it. The client's at the Red Sox game.

15 But it's not there. So what does Trooper
16 Norris say? I don't remember. I don't remember. This
17 is one of their two big events. I don't remember if
18 there are any calls in there. Have you got something to
19 show me? So I show him. And one of them is this guy
20 Lachance. And there's another two-minute call in there.
21 And you will see these calls because they're on the
22 Metro records.

23 Well, I don't know who those people are.
24 Well, I don't know that one, but I know Lachance and he
25 cooperated with us, so it can't be him.

1 That's sort of like Mr. Sweeney. You know,
2 you wouldn't be drug dealing and cooperating. When did
3 he start cooperating, Mr. Lachance? In January? Well,
4 we're talking about October. And whoever he called
5 during that two-hour gap -- and you will have every
6 single call. And it's not my client. Whoever he called
7 may not have been the actual supplier because what the
8 person he called is doing apparently is telling him that
9 the guy that can do it is at the Red Sox game.

10 That's one of their two big events. The other
11 one is this December 6th cancellation. This is -- my
12 client talks to him like he does virtually every day.
13 You will see these records. You can't pick a day. Or
14 if you are very lucky and you close your eyes, you'll
15 pick a day, you'll find one that my client doesn't talk
16 to him.

17 But my client talks to him around 11:00 in
18 the morning, and then at 5:00 or so Koustas tells the
19 courier, who I was calling Seiger, the guy from
20 Massachusetts, that it's off. You heard her. She just
21 played it again. It's off.

22 So my client must have told him. Even though
23 he would never, ever talk on a dirty phone or on that
24 phone, he must have been the one that did it.

25 All right. Trooper Norris, are there text

1 messages back and forth between Seiger and Koustas
2 during this period of time, anytime between the 11:00
3 call and 5:00 call? Are there text messages going back
4 and forth? I don't think so. Here they are. Look at
5 them. Oh, yes, there are some text messages. But we
6 don't know what they say. They could say anything.

7 Trooper Norris, did you make an application to
8 a federal district court judge to ask the phone company
9 to give you the historical text messages from that
10 phone? Yep. When I showed it to him, yep. What do
11 they say? I don't remember? Is that legit? Does that
12 have the ring of truth to you? I don't remember?
13 Because they're texting back and forth to each other
14 about a meeting or something that's going to happen at
15 5:00 and they don't mention it, that it's off?

16 Well, because if they mentioned that it's off,
17 then it can't be my client's phone call that told them
18 that it's off.

19 So I don't remember what those text messages
20 say. Hey, they could have been talking about anything.
21 Why would he bother to tell him it's off?

22 All right. That's the investigation. That's
23 why they turn to the trio that they turn to. That's
24 why. They have no choice. They have no case. Unless
25 you swallow -- even if you hold your nose. Unless you

1 swallow those three people.

2 Let's start with -- and I want to suggest to
3 you, and this is the most -- you bring to the jury box
4 this incredible amount of common sense and worldly
5 wisdom. You come from different walks of life. You've
6 had different life experiences. Together -- and this is
7 why we have juries of twelve. Together you have this
8 enormous wealth of experience and understanding. And
9 what you are actually doing in this case -- because
10 there's no wiretap conversation. I mean, I don't
11 represent Koustas. Koustas was caught within five
12 seconds of the wiretap going up.

13 You're going to have to make credibility
14 determinations in this case. That's what it's about.

15 So let me talk -- there are these two things
16 that I want to ask you to think about besides the normal
17 things of, you know, does this person -- when they raise
18 their right hand and swear to tell the truth, is there
19 any chance that that means anything to them? Is their
20 value system such that, oh, yeah, you know, that's where
21 I draw the line. Yeah, I might shoot you. I might rape
22 you. I might sell drugs for a living, but if I'm made
23 to swear that I'm going to tell the truth, that's what
24 I'm going to do.

25 Besides that, you want to back these people up

1 to each other. You know, when you get the fortunate
2 occurrence of somebody telling about the same event or
3 the same thing, you want to see how they stack up to
4 each other.

5 And then I suggest to you there's this other
6 important thing to think about, which is, you know, you
7 throw a pebble into the pond and it makes one circle and
8 then it makes another circle and then it makes another
9 circle. Often people see the logic of their lie, when
10 they tell the lie, they see that first circle. Some of
11 them even see the second circle, but the farther
12 circles, it just doesn't fit. It doesn't make sense.
13 The lie is easy, but it doesn't make sense.

14 Let's start with Sweeney. He's unbelievable I
15 suggest to you. I mean, where do people like that come
16 from? Oh, he had a tough upbringing. Lots of people
17 had a tough upbringing. He's 39 years old. Some people
18 actually reform themselves. It's not just that he sells
19 heroin. He's still, you know, an honorable guy. It's
20 not just that he committed rape. It's not just that he
21 can look you in the eye and say, oh, yeah -- you know, I
22 moved states. I was five days -- it was only five days.
23 I thought I had 30 days to register. So, you know,
24 yeah. That was an accident, failure to register as a
25 sex offender.

1 You know based on what other people have told
2 you that he can't possibly be telling the truth. You
3 just can't. That's because he picked the wrong place to
4 say he had this conversation with my client. He didn't
5 know there was a pole camera up there in front of Amory
6 House of Pizza. He just didn't know it. Or he would
7 have picked somewhere else. I guarantee it, I'd suggest
8 to you, that he would have picked somewhere else.

9 After he moved there in January, that pole
10 camera was still up. It's near Christmastime he says,
11 which means January, but -- wouldn't be New Year's.
12 That pole camera is still up. Where is it? Where's the
13 picture? I gave Trooper Norris the out. I said does it
14 work at night? Oh, no, it works at night. Where is it?

15 He's someone that's so believable you wouldn't
16 want to corroborate the fact that he had this meeting
17 when you have a camera right on Amory Street House of
18 Pizza?

19 But there's something else that when you talk
20 about him and Mr. Champagne -- you know, I only put in
21 two exhibits in this case. They are both about Mr.
22 Champagne. There's an audiotape that went on for 14 or
23 so minutes where Champagne is talking to Koustas from
24 his jail and they get onto the topic of Mr. Sweeney.
25 This is in March of 2014. And they talk about the fact

1 that Koustas -- I'm sorry, that Champagne beat Sweeney
2 up when they were in prison. Champagne said he thought
3 it was 2001 or 2002. Sweeney corroborated that for you,
4 in a manner of speaking. Of course, according to
5 Sweeney, there wasn't even a fight. They got separated
6 because they were in the weight room and so no one beat
7 up anyone, not even a punch was thrown. But Champagne
8 said to him, in effect, you stinking rat. You're a rat.

9 So my client, who's also in that jail, who is
10 obviously friends with Champagne, doesn't know that
11 Sweeney's a rat? Sweeney is a rat. He's the guy that
12 in 2001, he said, I got screwed because I didn't get the
13 benefit of my cooperation. I got screwed because of
14 that felonious sexual assault charge. He was a rat.
15 And this crew that grew up together, my client -- and
16 went to jail together as teenagers, my client and
17 Champagne and the rest of them all knew it.

18 So this is what my client does. He sees him
19 for the first time since 2006, and Champagne has been in
20 jail since 2009, and he says to Mr. Sweeney, not just
21 can you sell Molly for me, can you sell marijuana for
22 me. Let me fill you in on what's been going on just in
23 case you're interested. I'm using Kosmas Koustas now.

24 Okay. I mean, that guy's absolutely
25 ridiculous, and if I had a get-out-of-jail card for him,

1 he would have said anything I suggest to you that I
2 wanted him to say, and you should hear what he's saying
3 about you.

4 So then Mr. Venturini. You know, he's the one
5 that had the accident and he was out of it for a year
6 after the accident, spent three months in the hospital.
7 Well, according to Champagne he spent one month in the
8 hospital and he didn't miss a beat. Didn't miss a beat.
9 Still giving him the 20 to 40 pounds every other week or
10 so. Right after the other guy died, Mr. Lawyer, just
11 kept giving him the 20 to 40 pounds a week.

12 Now, Venturini said he was lifelong friends
13 with Nick Champagne. They really grew up together. And
14 when -- right before Champagne self-surrendered -- and
15 the prosecutor insisted on that again. He was on the
16 run for a month. He told you that himself. I asked him
17 did someone tip you off? And he said no. I said you're
18 under oath. He said, well, I don't remember.

19 He told you that one of the people when he was
20 on the run he stayed with was my client, which is
21 exactly what you would do if you were his boss, right?
22 And he's on the run from being -- an arrest warrant is
23 out there for him. They've just busted 40 people and
24 he's one of them. You wouldn't want the police to find
25 him at your house.

1 But the main thing that Venturini says is
2 right after Nick gets arrested, Nick Champagne gets
3 arrested, my client shows up at his house, first time
4 ever. They're not even friends. They know each other,
5 but they're not even friends. According to Nick
6 Champagne, this guy's getting 20 to 40 pounds of
7 marijuana from him every other week like clockwork. And
8 my client, who's the boss of the whole operation, who
9 understands everything, who's pulling the strings and
10 moving the chess pieces, says to him, how much are you
11 getting?

12 If he was moving the chess pieces, he wouldn't
13 have to ask Mr. Venturini how much he was getting. Is
14 that the easiest lie in the world to tell? With my
15 five-year-old daughter, I'm filling up my pool, and the
16 guy who's going to get me out of my problem happens to
17 show up? He's going to get me out of my problem because
18 I signed a cooperation agreement, the five-year on and
19 after -- he's the guy that loves guns. They have
20 nothing to do with his business. They're just for
21 target practice and stuff like that. He's the traded.
22 My client is the traded. All he's got to say is I had
23 this conversation with him. The conversation makes no
24 sense in context. None.

25 And he told you, too, that if he raised his

1 right hand and swore to tell the truth, he would. He
2 hasn't been sentenced yet. I wonder why that is.

3 Perhaps the government doesn't trust him to
4 stick with the story that he told, that he gets for the
5 cooperation agreement. They want to hear how he does
6 before he gets sentenced. He's got a range where he can
7 get in there. He's already ahead of the game, but it's
8 based on his cooperation.

9 All right. So let's get to the real person in
10 the case. I don't know how long I've been boring you
11 for, but let's get to the real person in the case, Mr.
12 Champagne. That's the case. If he's believed, if you
13 believe him, you should convict my client. You should.
14 If you weigh and balance what he has to say and it makes
15 you wonder whether you can believe him beyond a
16 reasonable doubt, you have to acquit my client. He is
17 the man. He's it. He's their case.

18 And the second -- you know two things about
19 him that you wouldn't have known if you had just
20 listened to him testify. One is that he does have a
21 deal to reduce his sentence -- his supervised release by
22 a year and a half and that his lawyer knew about it.
23 And if you believe that his lawyer knew that he had a
24 deal, but he kept it from him, that's your choice.

25 He insisted he had no deal, insisted. He also

1 told you that there is no -- what do you call it. No
2 honor in the drug business. I suggest, take him at his
3 word on that topic.

4 The first thing I asked him about was what's
5 your connection to Leventis. I mean, didn't you get his
6 contact information before he left jail about a year
7 before you did and about a year after my client did?
8 Didn't you get his contact information? Absolutely not.
9 Never happened.

10 I show him his debriefing. He goes, oh, yeah,
11 I might have said that. Might have said that. He said
12 it. He was in that jail for an additional year. He's
13 not Greek. There's no evidence that Leventis is a Greek
14 speaker, not one shred of evidence that Leventis is a
15 Greek speaker. So Greeks do crimes with Greeks? They
16 would never do crimes with someone who wasn't Greek? No
17 one named Leventis would work with someone named
18 Champagne?

19 According to Champagne that's who he dealt
20 with. He had the meeting at my client's house of pizza.
21 And he got the phone from Sarti, an encrypted
22 BlackBerry, and then he dealt with Leventis himself on
23 the BlackBerry. That's his story. Person that she
24 wants you to believe. That's his story.

25 And that my client had met with Leventis --

1 think about this for a second. My client is out of jail
2 in 2005. He's got a lousy pizza shop job. And he's got
3 this great Canadian connection. He can't wait until he
4 gets out of jail because then he's going to start making
5 real money.

6 In 2006 the guy gets out of jail. But my
7 client decides to wait another year for Champagne to get
8 out of jail? What is that about? For instance,
9 Venturini, when he told you that he had the connection
10 to Champagne, that's why he got 50 percent with his best
11 buddy lawyer, of course Champagne doesn't remember that
12 at all. He didn't even know they were partners, but
13 that's neither here nor there.

14 For the connect, Venturini said he got
15 50 percent. But my client wants 25 percent. When you
16 make a hundred dollars, give me \$25. When you make
17 \$150, give me \$25. When you make 200 on a pound, give
18 me \$25. When you make 300 on a pound, give me \$25.

19 Well, there's a genius businessman. That
20 turns things upside down. How many people here have
21 worked for a boss who makes less money than they do
22 consistently. And the boss never asks you for a raise.
23 What sense does that make? What sense does that story
24 make? It makes no sense.

25 And maybe my math stinks, but I'm actually not

1 on trial here. It's Champagne's math that's on trial.
2 He says in his debriefing that he moved 1,000 pounds.
3 1,000, not 6,000. But he says he gave my client
4 \$150,000. So I'm the one that says to him, well, if my
5 client makes \$25 a pound and you gave him \$150,000, you
6 must have moved 6,000 pounds. He said he moved 1,000
7 pounds.

8 You can listen to that phone call between him
9 and Champagne -- I mean, between him and Koustas and you
10 will know who Nick Champagne is. He says himself, we
11 should have a double ring ceremony in hell. That's
12 before he tells Koustas to let his daughter's bunny out
13 of the house so he doesn't have to take care of it and
14 tell her that the dog ate it. That's a man just
15 consumed with desire to take care of his children.

16 He recruited Kosmas Koustas. Allison
17 Ouellette told you that Kosmas Koustas and my client had
18 had a falling out and they were not really talking to
19 each other, even though they had all grown up together.
20 In 2009 they were not really talking to each other. And
21 Champagne told you, I'm the one that recruited Kosmas
22 Koustas. The prosecutor said, what did Mr. Nakos say
23 about that. It wasn't his business.

24 I never suggested that the father of -- that
25 he wants to meet with his father privately so it's not

1 recorded on a phone. I never suggested that his father
2 was running his drug business. I made it very clear
3 what I suggested, that his father was taking care of his
4 money because the government took zero from him.
5 Koustas was taking care of his drug business. He didn't
6 have to be actively involved. Koustas was. He told you
7 from the witness stand that Koustas was the guy he had
8 handpicked. He was going to go to the side and let
9 Koustas run everything. And he did.

10 Now, sometimes these cases are extremely easy
11 and extremely difficult at the exact same time, and I
12 want to suggest to you that if it was someone picked at
13 random from the courtroom, let's say this person, and
14 you had to decide whether Nick Champagne's description
15 and account of their interactions was correct, I suggest
16 you would never consider it. Thank you.

17 MS. OLLILA: Nothing further, Judge.

18 THE COURT: All right. We're going to take
19 the morning break and come back and I will give you my
20 instructions. I'm going to give you the paper copy as
21 I'm also instructing you and reading them to you. So
22 stretch a bit in there, perhaps some coffee before you
23 come back because I'm going to need you to pay close
24 attention. All right? So morning break and then we'll
25 be back.

1 (Recess taken.)

2 THE COURT: Members of the jury, you have now
3 heard all of the evidence in this case and arguments by
4 the lawyers. It is my duty at this point in the trial
5 to instruct you on the law that you must apply in
6 reaching your verdict. It is your duty to follow and
7 apply the law as I give it to you, but you alone are the
8 judges of the facts. Please do not consider any
9 statement that I have made in the course of trial or
10 make in these instructions as any indication that I have
11 any opinion about the facts of this case or what the
12 verdict should be. You should not single out any one
13 instruction but should instead apply these instructions
14 as a whole to the evidence in this case.

15 You are the sole and exclusive judges of the
16 facts. You must weigh the evidence that has been
17 presented impartially, without bias, without prejudice,
18 and without sympathy. You must make a determination as
19 to what the facts are and what the truth is based upon
20 the evidence presented in this case. You must decide
21 the case by applying the law as it is given to you in
22 these instructions and the facts as you find them to be
23 from the evidence.

24 You must apply the law regardless of any
25 opinion you may have as to what the law ought to be. It

1 would be a violation of your sworn duty if you were to
2 base your verdict upon any view of the law other than
3 that reflected in these instructions, just as it would
4 be a violation of your sworn duty as judges of the facts
5 to base a verdict upon anything but the evidence
6 presented in this case.

7 The fact that the prosecution is brought in
8 the name of the United States of America entitles the
9 government to no greater consideration than that
10 accorded to any other party to a litigation. By the
11 same token, it is entitled to no less consideration.
12 All parties, whether government or individuals, stand as
13 equals at the bar of justice.

14 The weight of the evidence is not necessarily
15 determined by the number of witnesses testifying on
16 either side. You should consider all the facts and
17 circumstances in evidence to determine which of the
18 witnesses are worthy of belief. In reviewing the
19 evidence, you should consider the quality of the
20 evidence and not the quantity. It is not the number of
21 witnesses or the quantity of testimony that is
22 important, but the quality of the evidence that has been
23 produced that is important. You must consider all of
24 the evidence no matter which side produced or elicited
25 it.

1 The evidence in this case consists of the
2 sworn testimony of the witnesses and all the exhibits
3 received in evidence and any facts which have been
4 admitted or stipulated. When both parties agree as to
5 the existence of a fact, you must, unless otherwise
6 instructed, accept that fact as evidence and regard that
7 fact as proved.

8 You must entirely disregard any evidence to
9 which an objection was sustained by me and any evidence
10 ordered stricken by me during your deliberations.

11 Certain things are not evidence and cannot be
12 considered by you as evidence.

13 First, arguments and statements by the lawyers
14 are not evidence. What they have said in their opening
15 statements, closing arguments, questions to the
16 witnesses and at other times is intended to help you
17 interpret the evidence, but it is not evidence. If the
18 facts as you remember them differ from what the lawyers
19 have said about those facts, your memory controls. If
20 the law as stated by the lawyers differs from the law as
21 stated by me, you must take the law from me. You are
22 not to be concerned with the wisdom of any rule of law.

23 Second, objections raised by the lawyers are
24 not evidence. Lawyers have a duty to object when they
25 believe a question is improper under the Rules of

1 Evidence. I must rule on objections and I have not
2 intended to indicate in any way by my rulings what the
3 verdict should be in this case. You should not be
4 influenced by the lawyers' objections or by my rulings
5 on those objections.

6 Third, anything you may have seen or heard
7 when the Court was not in session is not evidence. You
8 are to decide the case solely on the evidence received
9 at trial.

10 There are two types of evidence which you may
11 properly use in deciding this case, direct and
12 circumstantial.

13 Direct evidence is the testimony given by a
14 witness about what that witness has seen, has heard, or
15 has observed or what that witness knows based on
16 personal knowledge. Direct evidence also includes any
17 exhibits that have been marked.

18 Evidence may also be used to prove a fact by
19 inference, and this is referred to as circumstantial
20 evidence. In other words, from examining direct
21 evidence, you may be able to draw certain inferences
22 which are reasonable and justified in light of your
23 daily experience. Such inferences constitute
24 circumstantial evidence. Circumstantial evidence may be
25 given the same weight by you as direct evidence.

1 During the course of the trial, I may have
2 instructed you that certain evidence was being admitted
3 for a limited purpose. It is your duty to follow these
4 instructions during your deliberations.

5 The fact that an indictment is returned
6 against an individual is not evidence of that person's
7 guilt. An indictment is merely a formal method of
8 accusing an individual of a crime in order to bring that
9 person to trial. It is you, the jury, who will
10 determine whether an individual is guilty or not guilty
11 of the offense charged based on a consideration of all
12 the evidence presented and the law applicable to the
13 case. Therefore, you must not consider the indictment
14 in this case as any evidence of the guilt of the
15 defendant, nor should you draw any inference from the
16 fact that an indictment has been returned against him.

17 The defendant, although accused, begins a
18 trial with a clean slate with no evidence against him.
19 The law permits nothing but legal evidence presented
20 before the jury to be considered in support of any
21 charge against a defendant. The law presumes every
22 defendant to be innocent until proven guilty beyond a
23 reasonable doubt. The burden of proving a defendant
24 guilty rests entirely on the government. The defendant
25 does not have to prove his innocence. The defendant

1 enters the courtroom and is presumed to be innocent
2 until the government convinces you beyond a reasonable
3 doubt that he is guilty of every essential element of
4 the offense charged.

5 The presumption of innocence alone is
6 sufficient to acquit a defendant unless the jury is
7 satisfied beyond a reasonable doubt that the defendant
8 is guilty after a careful and impartial consideration of
9 all of the evidence in the case.

10 The burden is always on the government to
11 prove guilt beyond a reasonable doubt. This burden
12 never shifts to a defendant. The law does not impose
13 upon a defendant in a criminal case the burden or duty
14 of calling any witnesses or producing any evidence.

15 If, after careful and impartial consideration
16 of all of the evidence in this case, you have a
17 reasonable doubt the defendant is guilty of the charges
18 set forth in the indictment, you must find the defendant
19 not guilty.

20 A jury must never find a defendant guilty
21 based on mere suspicion, conjecture, or guess. Rather,
22 you must decide the case on the evidence that is before
23 you and on the reasonable inferences that can be drawn
24 from that evidence.

25 In determining what the facts are and what the

1 truth is, you must necessarily assess the credibility of
2 each witness and determine what weight you will give to
3 each witness's testimony. By credibility I mean the
4 believability or the truthfulness of a witness.

5 You should carefully scrutinize all the
6 testimony given, the circumstances under which each
7 witness has testified, and every matter in evidence
8 which tends to show whether a witness is worthy of
9 belief or not worthy of belief. For example:

10 Consider each witness's intelligence, motive,
11 state of mind, demeanor and manner while testifying.

12 Consider the witness's ability to observe or
13 to know the matters about which that witness has
14 testified and whether the witness impresses you as
15 having an accurate recollection of those matters.

16 Consider whether the witness had any reason
17 for telling the truth or not telling the truth, whether
18 the witness had an interest in the outcome of the case,
19 whether the witness had anything to gain or lose as a
20 result of his or her testimony, whether the witness had
21 any friendship, relationship, or animosity towards other
22 individuals involved in the case, whether the witness's
23 testimony was consistent or inconsistent with itself or
24 with the testimony of other witnesses.

25 Consider the extent, if any, to which the

1 testimony of each witness is either supported or
2 contradicted by other evidence in the case.

3 The testimony of a witness may be discredited
4 or, as we sometimes say, impeached by showing that the
5 witness previously made statements that are different
6 than or inconsistent with his or her testimony here in
7 court.

8 Inconsistent or contradictory statements which
9 are made by a witness outside of court may be considered
10 only to discredit or impeach the credibility of the
11 witness and not to establish the truth of these earlier
12 out-of-court statements.

13 You must decide what weight, if any, should be
14 given the testimony of a witness who has made prior
15 inconsistent or contradictory statements. In making
16 this determination, you may consider whether the witness
17 purposely made a false statement or whether it was an
18 innocent mistake, whether the inconsistency concerns an
19 important fact, or whether it had to do with only a
20 small detail, whether the witness had an explanation for
21 the inconsistency, and whether that explanation appealed
22 to your common sense.

23 You should give the testimony of each witness,
24 both on direct and cross-examination, the weight you
25 think it deserves. You are not required to believe the

1 testimony of any witness simply because that witness was
2 under oath. You may believe or disbelieve all or part
3 of the testimony of any witness. It is within your
4 province to determine what testimony is worthy of belief
5 and what testimony may not be worthy of belief.

6 You have heard testimony from government
7 witnesses who pled guilty to charges similar to those in
8 this case. You are instructed that you are to draw no
9 conclusions or inferences of any kind about the guilt of
10 the defendant on trial from the fact that prosecution
11 witnesses or other individuals pled guilty to similar
12 charges. The decisions by others to plead guilty were
13 personal decisions about their own guilt. You may not
14 use these guilty pleas in any way as evidence against
15 the defendant on trial here.

16 Witnesses have testified in this case who have
17 been made promises by the government. You should
18 consider whether the testimony of such a witness may
19 have been influenced by the government's promise and you
20 should consider the testimony of such a witness with
21 greater caution than that of an ordinary witness.

22 During the course of the trial, you've heard
23 several law enforcement agents testify. You should
24 consider the testimony of a law enforcement agent the
25 same as the testimony of any other witness in the case.

1 In evaluating the credibility of a law enforcement
2 agent, you should use the same test which you applied to
3 the testimony of any other witness. In no event should
4 you give the testimony of a law enforcement agent any
5 more credibility or any less credibility simply because
6 of that witness's position.

7 After assessing the credibility of each
8 witness, you will assign as much weight to his or her
9 testimony as you deem proper. You may believe or
10 disbelieve all or part of the testimony of any witness.
11 You determine what testimony is worthy of belief and
12 what testimony may not be worthy of belief. The
13 testimony of a single witness may be sufficient to prove
14 any fact, even if a greater number of witnesses may have
15 testified to the contrary, if after considering all the
16 other evidence you believe that single witness.

17 The fact that the defendant did not testify
18 must not be considered by you in any way or even
19 discussed in your deliberations. He has an absolute
20 right not to take the witness stand, and you must not
21 draw any inferences from the fact that he exercised that
22 right.

23 You are not to give any consideration to
24 potential punishments or sentences in deciding this
25 case. The punishment provided by law for the offense

1 charged in the indictment is a matter exclusively within
2 the province of the Court and should never be considered
3 by the jury in any way in arriving at an impartial
4 verdict. You must decide this case based on the
5 evidence you have seen and heard and on the law as I
6 give it to you and not on any punishment you believe the
7 defendant might receive or could receive.

8 The indictment consists of two counts. Count
9 1 charges the defendant with engaging in a continuing
10 criminal enterprise involving violations of the
11 Controlled Substances Act. Count 2 charges the
12 defendant with conspiring to distribute controlled
13 substances, and to possess controlled substances with
14 the intent to distribute them.

15 I will describe the charges against the
16 defendant in more detail in a moment. For reasons that
17 need not concern you, I will describe Count 2 first and
18 will then turn to Count 1.

19 A separate crime is charged in each count of
20 the indictment. Each offense and the evidence
21 pertaining to it should be considered separately.

22 The defendant is not on trial for any act or
23 conduct not alleged in the indictment. You are not to
24 be concerned with the guilt of any person or persons not
25 on trial as a defendant in this case.

1 The defendant has pleaded not guilty to both
2 charges. The defendant does not have to prove that he
3 is innocent. The defendant has no burden of proof
4 whatsoever. The government carries the burden of proof
5 throughout this trial and throughout your deliberations.
6 The government's burden is to prove beyond a reasonable
7 doubt each element of both charges. You must presume
8 the defendant is innocent throughout your deliberations.
9 You may not find the defendant guilty unless all twelve
10 of you agree that the government has proven each element
11 of a charge beyond a reasonable doubt.

12 The indictment alleges that the crimes it
13 charges the defendant with occurred in or about certain
14 dates. The government does not have to prove with
15 certainty the exact date of either alleged offense. It
16 is sufficient if the government proves beyond a
17 reasonable doubt that the offense occurred on a date
18 reasonably near the date alleged.

19 As I have already told you, I will begin by
20 explaining the crime charged in Count 2.

21 In Count 2 the indictment charges that:

22 From at least in or about 2008, up to and
23 including June 2014, in the District of New Hampshire,
24 the District of Massachusetts, the District of New York,
25 the District of Vermont, and elsewhere, defendant, Alkis

1 Nakos, knowingly, intelligently, and unlawfully agreed
2 and conspired together, and with others known and
3 unknown to the grand jury, to distribute, and possess
4 with intent to distribute, in excess of a thousand
5 kilograms or more of a mixture or substance containing a
6 detectable amount of marijuana, a Schedule I controlled
7 substance, and 3,4 methylenedioxymethamphetamine, or
8 MDMA, a/k/a Ecstasy, a/k/a Molly, a Schedule I
9 controlled substance, in violation of Title 21, U.S.
10 Code, Sections 841(a)(1), 841(b)(1)(A)(vii), and 846.

11 In the rest of these instructions, unless I'm
12 directly quoting the indictment, I will refer to the
13 controlled substance called 3,4 methylenedioxymethamphetamine by its acronym, MDMA.

15 In order for you to find the defendant guilty
16 of the crime charged in Count 2, the government must
17 prove each of the following elements beyond a reasonable
18 doubt:

19 First, two or more persons entered into the
20 agreement described in the indictment to distribute or
21 possess with intent to distribute marijuana or MDMA, in
22 any amount;

23 Second, the defendant joined the conspiracy
24 with knowledge of the existence of the conspiracy and
25 its criminal objectives;

1 Third, the defendant knowingly, voluntarily,
2 and intelligently became a member of the conspiracy; and
3 Fourth, in joining the conspiracy, the
4 defendant intended to achieve the unlawful objectives of
5 the conspiracy.

6 I will now give you a bit more detail about
7 each of these elements.

8 First element. A conspiracy is an agreement,
9 spoken or unspoken, between two or more people who join
10 together in an attempt to achieve an unlawful objective.
11 The essence of conspiracy is an agreement. However, it
12 is not necessary that the conspirators enter into a
13 formal express agreement or plan for a conspiracy to
14 exist. What the government must prove is that there was
15 a mutual understanding, either spoken or unspoken,
16 between two or more people to cooperate to accomplish an
17 unlawful act.

18 Each conspirator need not know all the details
19 of the conspiracy or even the names and identities of
20 all the other alleged conspirators. It is sufficient if
21 the conspirators each agree to join in the conspiracy to
22 accomplish the unlawful objectives of the conspiracy.
23 Finally, the conspirators need not all join the
24 conspiracy so long as the overall plan and objectives of
25 the conspiracy persisted without fundamental alteration

1 notwithstanding any changes in membership.

2 Second element. To be guilty of the offense
3 of conspiracy, the defendant must know of the existence
4 of the conspiracy when he becomes a member. That is to
5 say, he must be aware of the existence of the conspiracy
6 and its unlawful objectives. It is unnecessary that a
7 defendant know all of the details of the conspiracy or
8 the names of all of the other alleged conspirators so
9 long as the defendant joins the conspiracy with an
10 awareness of the existence of the conspiracy and its
11 unlawful objectives.

12 Third element. A defendant must knowingly and
13 willfully join in the conspiracy to be guilty of
14 conspiracy. To act willfully means to act voluntarily
15 and intelligently and with the specific intent to do
16 something the law forbids. That is to say, with bad
17 purpose, either to disobey or disregard the law.
18 Willful action does not include action resulting from
19 ignorance, accident, or mistake. The government must
20 prove two types of intent beyond a reasonable doubt
21 before the defendant can be said to have willfully
22 joined the conspiracy: An intent to agree and an intent
23 that the underlying crime be committed. Mere presence
24 at the scene of a crime is not alone enough, but you may
25 consider it among other factors. Intent may be inferred

1 from the surrounding circumstances.

2 Proof that the defendant willfully joined in
3 the agreement must be based upon evidence of his own
4 words or actions. You need not find that the defendant
5 agreed specifically to or knew about all the details of
6 the crime or that he participated in each act of the
7 agreement or played a major role, but the government
8 must prove beyond a reasonable doubt that the defendant
9 knew the essential features and general aims of the
10 venture. Even if the defendant was not part of the
11 agreement at the very start, he can be found guilty of
12 conspiracy if the government proves that he willfully
13 joined the agreement later. On the other hand, a person
14 who has no knowledge of a conspiracy, but simply happens
15 to act in a way that furthers some object or purpose of
16 the conspiracy, does not thereby become a conspirator.

17 Element four. Count 2 alleges a conspiracy to
18 distribute and to possess with intent to distribute two
19 controlled substances, MDMA and marijuana. It is
20 unlawful for a person knowingly or intentionally to
21 distribute or possess with intent to distribute a
22 controlled substance. Although the indictment charges
23 conspiracy to distribute and possess with intent to
24 distribute, it is sufficient for the government to prove
25 that the defendant conspired either to distribute or

1 conspired to possess with intent to distribute.
2 Similarly, while the indictment charges that the
3 conspiracy involved marijuana and MDMA, it is sufficient
4 for the government to prove that the conspiracy involved
5 marijuana or MDMA. The government need not prove both
6 alternatives. In determining whether a conspiracy to
7 distribute or possess with intent to distribute
8 controlled substances existed and whether the defendant
9 joined the alleged conspiracy with an intention that
10 these offenses be committed, you will consider now my
11 instructions on the offenses of distribution and
12 possession with intent to distribute below.

13 A person distributes a controlled substance
14 when he intentionally transfers or delivers to another
15 person what he knows to be a controlled substance. A
16 person possesses a controlled substance with intent to
17 distribute by possessing that substance with knowledge
18 of what it is and with an intent to distribute it.

19 Possession means the exercise of control or
20 authority over something at a given time. There are
21 several types of possession, actual, constructive, sole,
22 and joint. All four types of possession satisfy the
23 possession element of the offense of possession of a
24 controlled substance with intent to distribute.

25 Possession is actual when a person knowingly has direct

1 physical control over something. Possession is
2 constructive when a person does not have direct physical
3 control over something, but can knowingly control it and
4 intends to control it, sometimes through another person.
5 Possession may be knowingly exercised by one person
6 exclusively, which is called sole possession, or
7 possession may be knowingly exercised jointly when it is
8 shared by two or more persons.

9 It is not necessary for the government to
10 prove that the conspirators succeeded in their alleged
11 conspiracy for the defendant to be guilty of conspiracy.

12 The mere presence of the defendant at the
13 scene of an alleged crime does not, standing alone, make
14 him a member of a conspiracy. Mere association with one
15 or more members of the conspiracy does not make a
16 defendant a member. One may know or be friendly with a
17 criminal without himself or herself being a criminal.
18 Mere similarity of conduct or the fact that the parties
19 may have assembled together and discussed common names
20 and interests does not by itself establish proof of the
21 existence of a conspiracy.

22 You have heard testimony that certain persons
23 alleged to be co-conspirators of the defendant have done
24 or said things during the life or existence of the
25 conspiracy in order to further or advance its goals.

1 Since these acts may have been performed and these
2 statements may have been made outside the presence of
3 the defendant, and even done or said without his
4 knowledge, you should examine these acts or statements
5 with particular care before you consider them to be
6 evidence against him.

7 You may consider the acts and statements of
8 co-conspirators in determining whether a conspiracy as
9 charged in the indictment existed. However, only the
10 defendant's own acts and statements show whether the
11 defendant knowingly, voluntarily, and intentionally
12 joined the conspiracy. Thus, in determining whether
13 this element of the conspiracy has been proved, you may
14 consider the acts and statements of co-conspirators only
15 to the extent that they help you understand the
16 defendant's own acts and statements.

17 Count 1. In Count 1, the indictment charges
18 that:

19 From at least in or about 2008 up to and
20 including June 2014, in the District of New Hampshire
21 the District of Massachusetts, the District of New York,
22 the District of Vermont, and elsewhere, defendant, Alkis
23 Nakos, knowingly, intentionally, and unlawfully engaged
24 in a continuing series of violations of the Controlled
25 Substances Act, Title 21, U.S. Code, Section 801, et

1 seq., which were undertaken by defendant in concert with
2 at least five other persons with respect to whom
3 defendant occupied a position of organizer, supervisor,
4 or manager, and from which defendant obtained
5 substantial income and resources, in violation of Title
6 21, United States Code, Section 848(a).

7 In order for you to find the defendant guilty
8 of the crime charged in Count 1, engaging in a
9 continuing criminal enterprise, you must find that the
10 government has proved all of the following elements
11 beyond a reasonable doubt.

12 First, the defendant committed a felony
13 violation of the federal narcotics laws;

14 Second, that violation was part of a series of
15 at least three or more offenses committed by the
16 defendant in violation of the federal narcotics laws,
17 which make it a crime to distribute controlled
18 substances or to possess controlled substances with the
19 intent to distribute;

20 Third, the defendant committed the offenses in
21 this series of violations in concert with five or more
22 persons;

23 Fourth, the defendant acted as an organizer,
24 supervisor, or manager of the five or more persons with
25 whom he acted in concert; and

1 Fifth, that the defendant obtained substantial
2 income or resources from the series of offenses.

3 I will now explain each of the five elements
4 the government must prove before you may find the
5 defendant guilty of the continuing criminal enterprise
6 offense charged in Count 1.

7 First element. The first element the
8 government must prove is that the defendant committed a
9 felony violation of the federal narcotics laws. If you
10 find that the defendant is guilty of the conspiracy
11 charge in Count 2, then the government has also
12 established the first element of Count 1.

13 Element two. The second element the
14 government must prove is that the violation that
15 establishes the first element was part of a series of
16 offenses that included three other violations of the
17 federal narcotics laws. Violations that form a series
18 are violations that are connected together as
19 distinguished from violations that are isolated or
20 unconnected. In order to find that this element of the
21 crime charged in Count 1 has been proven, you must
22 unanimously agree that the government has established at
23 least three other violations of the federal narcotics
24 laws. Moreover, you must unanimously agree on which
25 three violations constitute the continuing series of

1 violations, and you must unanimously agree that at least
2 one of them occurred after July 23rd, 2009.

3 To establish the second element of Count 1,
4 the government must prove that the defendant engaged in
5 at least three acts of aiding and abetting the
6 distribution of a controlled substance or aiding and
7 abetting the possession of a controlled substance with
8 intent to distribute. I will now describe the elements
9 of aiding and abetting and will then describe the
10 elements of the underlying crimes of distributing a
11 controlled substance and possessing a controlled
12 substance with intent to distribute.

13 To "aid and abet" means intentionally to help
14 someone else commit a crime. To establish aiding and
15 abetting, the government must prove beyond a reasonable
16 doubt both of the following elements: One, that someone
17 else committed an underlying crime, and, two, that the
18 defendant associated himself in some way with the crime
19 and participated in it as he would participate in
20 something he wished to bring about. This means that the
21 government must prove that the defendant consciously
22 shared the other person's knowledge of the underlying
23 criminal act and intended to help him or her. To be
24 guilty of aiding and abetting, the defendant need not
25 perform the underlying criminal act, be present when it

1 is performed, or be aware of the details of its
2 execution. But a general suspicion that an unlawful act
3 may occur or that something criminal is happening is not
4 enough. Mere presence at the scene of a crime and
5 knowledge that a crime is being committed are also not
6 sufficient to establish aiding and abetting. Now I will
7 describe the elements of the underlying crimes.

8 Under the circumstances of this case a person
9 committed the offense of distributing a controlled
10 substance if:

11 First, he transferred marijuana or MDMA to
12 another person;

13 Second, he knew that what he transferred was
14 marijuana or MDMA; and

15 Third, he acted intentionally, that is, that
16 it was his conscious object to transfer the controlled
17 substance to another person.

18 Under the circumstances of this case, a person
19 committed the offense of possession of a controlled
20 substance with intent to distribute if:

21 First, he possessed marijuana or MDMA, either
22 actually or constructively;

23 Second, he did so with a specific intent to
24 distribute the marijuana or MDMA over which he had
25 actual or constructive possession; and

1 Third, he did so knowingly and intentionally.

2 To find that a person possessed a controlled
3 substance with intent to distribute, it is not necessary
4 for you to be convinced that he actually delivered
5 marijuana or MDMA to someone else or that he made any
6 money out of the transaction. It is enough for the
7 government to prove, beyond a reasonable doubt, that he
8 had in his possession what he knew to be marijuana or
9 MDMA and that he intended to transfer it or some of it
10 to someone else.

11 A person's intent may be inferred from the
12 surrounding circumstances. Intent to distribute may,
13 for example, be inferred from a quantity of drugs larger
14 than that needed for personal use. In other words, if
15 you find that a person possessed a quantity of marijuana
16 or MDMA that was more than an amount that would be
17 needed for personal use, then you may infer that that
18 person intended to distribute marijuana or MDMA. The
19 law does not require you to draw such an inference, but
20 you may draw it.

21 Element three. The third element the
22 government must prove is that the defendant committed
23 the offenses in the underlying series of violations in
24 concert with five or more other persons. The phrase "in
25 concert with five or more other persons" requires an

1 agreement by the defendant, whether direct or indirect,
2 with at least five other persons who were involved in
3 the continuing series of narcotics violations. To prove
4 that the defendant acted in concert with five or more
5 other persons does not require proof that the five or
6 more other persons actually had contact with each other,
7 knew each other, or committed each violation together,
8 or operated together continuously at the same time.
9 Proof is not required that the organization,
10 supervision, or management of five or more persons
11 occurred at the same time.

12 In addition, you do not have to agree
13 unanimously on the identities of the five people with
14 whom the defendant acted in concert. All twelve jurors
15 do not have to agree that the defendant acted in concert
16 with the same five people so long as each juror is
17 independently satisfied that the government has proven
18 beyond a reasonable doubt that the defendant acted in
19 concert with some collection of five or more other
20 persons and that the defendant and at least five or more
21 other persons were part of an agreement or a joint
22 action to commit the series of violations alleged by the
23 government.

24 Element four. The fourth element the
25 government must prove is that the defendant acted as an

1 organizer, supervisor, or manager of the five other
2 persons with whom he acted in concert.

3 The terms "organizer," "supervisor," and
4 "manager" are to be given their usual and ordinary
5 meanings. These words imply the exercise of power or
6 authority by a person who occupies some position of
7 management or supervision. Such person need not be the
8 sole or only organizer, supervisor, or manager of the
9 activities or persons in question.

10 Element five. The fifth element the
11 government must prove is that the defendant obtained
12 substantial income or resources from the series of
13 violations. The phrase "obtain substantial income or
14 resources" is also to be given its usual and ordinary
15 meaning. The statute requires proof that the income or
16 resources obtained by the defendant from the activity
17 must be significant and not trivial. But it is not
18 limited to profit and includes gross income or gross
19 receipts. The term "substantial income or resources"
20 may include money and other things of value.

21 When you retire to the jury room to
22 deliberate, you may take with you this charge and the
23 exhibits admitted into evidence. You will also take
24 with you a form on which to record your verdict.

25 In addition, you will be able to view the

1 documentary exhibits in this case through an electronic
2 system called JERS. J-E-R-S stands for Jury Evidence
3 Recording System. In your deliberation room is a plasma
4 television. You will be able to view the exhibits from
5 that plasma television screen. It is operated by touch.
6 The courtroom deputy will show you a brief tutorial.

7 You should understand that you will also have
8 all the documentary exhibits in paper copy to examine as
9 well. The JERS system is simply another way for you to
10 review the exhibits. The advantage is that you can all
11 see an exhibit on the screen and discuss it while seeing
12 it displayed on the screen.

13 The principles of law set forth in these
14 instructions are intended to guide you in reaching a
15 fair and just result in this case, which is important to
16 all the parties. You are to exercise your judgment and
17 common sense without prejudice and without sympathy, but
18 with honesty and understanding. You should be
19 conscientious in your deliberations and seek to reach a
20 just result in this case because that is your highest
21 duty as judges of the facts and as officers of this
22 court. Remember also that the question before you can
23 never be: Will the government win or lose the case?
24 The government always wins when justice is done,
25 regardless of whether the verdict be guilty or not

1 guilty.

2 When you have considered and weighed all of
3 the evidence, you must make one of the following
4 findings with respect to the charge:

5 One, if you have a reasonable doubt as to
6 whether the government has proved any one or more of the
7 elements of the crime charged, it is your duty to find
8 the defendant not guilty.

9 Two, if you find that the government has
10 proved all of the elements of the crime charged beyond a
11 reasonable doubt, then you may find the defendant
12 guilty.

13 The punishment provided by law for the offense
14 charged in the indictment is a matter exclusively within
15 the province of the Court. It should never be
16 considered by you in any way in arriving at an impartial
17 verdict.

18 You should conduct your deliberations by
19 considering the issues before you in the order described
20 in the verdict form you will take with you into the jury
21 room. You must begin your deliberations by deciding
22 whether the government has proved beyond a reasonable
23 doubt each of the elements of the conspiracy offense
24 charged in Count 2. If you have a reasonable doubt as
25 to whether the government has proven any one of those

1 four elements, then you must find the defendant not
2 guilty on Count 2 and conclude your deliberations. That
3 is because a verdict of not guilty on Count 2 precludes
4 a guilty verdict on Count 1. But if you find that the
5 government has proven all four elements of its
6 conspiracy charge, then you may find the defendant
7 guilty of conspiracy.

8 If you find the defendant guilty of
9 conspiracy, and if you find that the conspiracy involved
10 marijuana, then you must go on to answer two questions
11 about the weight of the marijuana in this case. First,
12 using the weight ranges provided on the verdict form,
13 you must determine beyond a reasonable doubt how much
14 marijuana the conspiracy involved. Then you must
15 determine beyond a reasonable doubt how much marijuana
16 the defendant reasonably foresaw as being involved in
17 the conspiracy.

18 In addition, if you find the defendant guilty
19 of conspiracy, then you must also go on to decide
20 whether the government has proven beyond a reasonable
21 doubt each of the five elements of the continuing
22 criminal enterprise offense charged in Count 1. If you
23 have a reasonable doubt as to whether the government has
24 proven any one of those five elements, then you must
25 find the defendant not guilty on that count and conclude

1 your deliberations. But if you find that the government
2 has proven all five elements of its continuing
3 enterprise charge, then you may find the defendant
4 guilty of the crime charged in Count 1.

5 When you retire, you should elect one member
6 of the jury as your foreperson. That individual will
7 act very much like a chairperson of a committee, seeing
8 to it that the deliberations are conducted in an orderly
9 fashion and that each juror has a full and fair
10 opportunity to express his or her views, positions, and
11 arguments.

12 The verdict must represent the considered
13 judgment of each juror. In order to return a verdict,
14 it is necessary that each juror agree thereto. Your
15 verdict must be unanimous.

16 It is your duty as jurors to consult with one
17 another and to deliberate with a view to reaching an
18 agreement, if you can do so without violence to
19 individual judgment. Each of you must decide the case
20 for yourself, but do so only after an impartial
21 consideration of the evidence in the case with the other
22 jurors. In the course of your deliberations, do not
23 hesitate to reexamine your own views and to change your
24 opinion if convinced it is erroneous, but do not
25 surrender your honest conviction as to the weight or

1 effect of the evidence solely based on the opinion of
2 the other jurors or merely for the purpose of returning
3 a verdict. Remember at all times that you are not
4 partisans. You are judges, judges of the facts. Your
5 only interest is to seek the truth from the evidence in
6 the case.

7 If during your deliberations it becomes
8 necessary to communicate with me, please give a written
9 message to the court security officer who will bring it
10 to me. I will then respond as promptly as possible,
11 either in writing or by meeting with you in the
12 courtroom. I will always first show the attorneys your
13 question and my response before I answer your question.
14 This procedure for asking questions in written form also
15 applies to any questions you might have concerning the
16 JERS system, even if your question pertains to obtaining
17 technical assistance with the system.

18 The evidence of contraband, including guns,
19 ammunition, marijuana, and MDMA will be available for
20 your review if you request it.

21 Now, this is very important, you must never
22 disclose to anyone, including the Court, how the jury
23 stands, numerically or otherwise, on the matters you are
24 deciding until after you have reached a unanimous
25 verdict or have been discharged. In other words, if the

1 jury is split, say, six to six on some issue, the
2 existence of that split or the number on one side or the
3 other must not be disclosed to anyone, including me.

4 If we recess during your deliberations, you
5 must follow all the instructions I have given you
6 concerning your conduct during the trial. In
7 particular, do not discuss the case with anyone other
8 than your fellow jurors in the jury room when everyone
9 is present.

10 You were permitted to take notes during this
11 trial, and I want to remind you of the instructions I
12 gave you about your notes. Do not use your notes as
13 authority to persuade other jurors. Your notes should
14 be used only as aids to your own memory, and must not be
15 used as authority to persuade the other jurors of what
16 the evidence was during the trial. In the end, each
17 juror must rely on his or her own recollection or
18 impression as to what the evidence was.

19 You are each going to have a paper copy of my
20 jury instructions to take with you into the jury room.
21 Attached to your individual copy of the jury
22 instructions is a copy of the verdict form. The verdict
23 form is self-explanatory and contains all the questions
24 you need to answer as well as step-by-step instructions.
25 Read that verdict form carefully and follow the

1 instructions on it. The verdict form is consistent with
2 the instructions I have just given to you. Feel free to
3 consult the paper copy of the jury instructions as you
4 deliberate. After you have reached your unanimous
5 verdict, your foreperson must complete, sign, and date
6 the official verdict form. The official verdict form
7 will be given to you with an envelope and will be marked
8 with the word "original" at the top of the form. After
9 you have reached a verdict, you are not required to talk
10 to anyone about the case unless I direct you to do so.

11 Let me once again tell you that nothing said
12 in these instructions is intended to suggest in any way
13 what your verdict should be. The verdict is the
14 exclusive responsibility of the jury, not the judge.

15 When you have arrived at a verdict, notify the
16 court security officer and you will be brought back into
17 the courtroom where the foreperson will render the
18 verdict orally.

19 Does counsel need to approach for any reason.

20 MS. OLLILA: No, your Honor.

21 MR. SHEKETOFF: No, your Honor.

22 THE COURT: Now, I've got to explain to you,
23 there are obviously 14 of you, but there are only 12
24 members of the deliberating jury, and so two of you will
25 be selected as alternate jurors. I have a very fancy

1 way of doing this. It's random. I am going to pick --
2 I have the numbers 1 through 14 because there are 14 of
3 you in the jury box, and I'm going to pick out randomly
4 the numbers to select the alternates.

5 Now, remember, alternates, if you are so
6 named, you are still members of this jury. You must
7 still follow all of my instructions, which means you may
8 not talk to anyone else at all about the case. You
9 can't do research about it. All the instructions that
10 I've given you throughout still pertain.

11 Now, if you are selected as an alternate, it's
12 your decision, you may remain here and we'll find a
13 place for you to remain or you may actually leave. You
14 need to first, before you leave, give my courtroom
15 deputy your cellphone number or contact info so we can
16 contact you immediately, because if something, God
17 forbid, happens and we have to replace one of our
18 deliberating jury, then you will return and you will
19 come back to the jury. The jury actually starts
20 deliberating fresh if an alternate is brought back. You
21 start again, and I will give you instructions on that,
22 but you are still a member of the jury. You are just
23 not one of the 12 deliberating. Okay?

24 Now, if you are selected as an alternate, two
25 of you will be, you will then go into the deliberating

1 room to gather and retrieve your belongings and then the
2 jury of 12 will remain. You do not begin deliberating,
3 discussing anything, until the two alternates have left
4 and the two alternates will then decide what you want to
5 do and tell my courtroom deputy, give my courtroom
6 deputy your contact info.

7 So now I will randomly select. Juror No. 9.
8 Juror No. 12.

9 Okay. So Juror No. 9 and Juror No. 12 are the
10 two alternates.

11 Now, if the court security officer could be
12 sworn.

13 THE CLERK: Please raise your right hand.

14 (Court security officer duly sworn.)

15 THE COURT: All right. The jury may begin
16 deliberating after the two alternates have left. Thank
17 you.

18 (Jury deliberations began at 12:25 p.m.)

19 (Jury adjourned deliberations at 3:40 p.m.)

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1 C E R T I F I C A T E
23 I, Diane M. Churas, do hereby certify that the
4 foregoing transcript is a true and accurate
5 transcription of the within proceedings, to the best of
6 my knowledge, skill, ability and belief.7
8 Submitted: 4/14/16

DIANE M. CHURAS, LCR, CM
LICENSED COURT REPORTER, NO. 16
STATE OF NEW HAMPSHIRE

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